

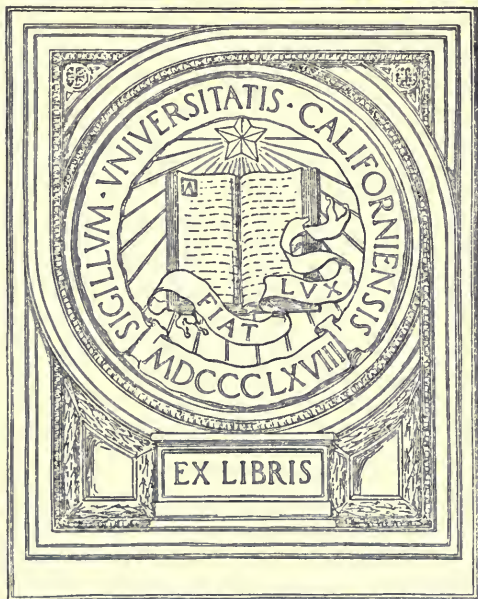
CLASSICS OF THE BAR



VOLUME VI

ALVIN V
SELLERS

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CLASSICS OF THE BAR



CLASSICS OF THE BAR

STORIES OF THE WORLD'S GREAT LEGAL
TRIALS AND A COMPILATION OF
FORENSIC MASTERPIECES

BY
ALVIN V. SELLERS

THE
CLASSICS OF THE BAR
A COMPILATION OF
THE WORLD'S GREAT LEGAL
TRIALS AND A COMPILATION OF
FORENSIC MASTERPIECES

VOLUME SIX

THE
CLASSICS OF THE BAR
A COMPILATION OF
THE WORLD'S GREAT LEGAL
TRIALS AND A COMPILATION OF
FORENSIC MASTERPIECES

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The Defense of the Dream

IN the January, 1845, issue of *The Dew Drop*, a temperance periodical published at Taunton, Mass., appeared an article entitled, "A DREAM: WAS IT ALL A DREAM?" which became the basis for an action for libel brought by William Wilbar against B. W. Williams, editor and publisher, and Messrs. Hack and Bradbury, printers of the paper.

Wilbar was a storekeeper, selling groceries, liquors, etc. He contended that by the article he was grossly slandered, and sought damages in the sum of \$30,000.

The article complained of was as follows:

A DREAM

"WAS IT ALL A DREAM?"

As we sat in our room a few days since, thinking what more could be done to advance the cause of temperance in this community, we fell asleep and dreamed the following dream: We were in Rum Hollow, and by some irresistible impulse we were drawn into that house of human slaughter, kept by one WILBAR. Such sights as we there saw, may we never behold again. As we passed the threshold, the first object that attracted our

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attention was the presiding genius of the place — the incarnate Devil. On an elevated seat in the back part of this indescribable hell he sat; while ever and anon there issued from his mouth flames of fire, which withered and scorched all the deluded wretches who had been enticed within by the intrigue and cunning of his faithful understrappers. Unobserved by the Devil's agent, whom we immediately recognized as Wilbar, we concealed ourself behind a huge cask labeled *Mania a potu*.

Having recovered somewhat from the shock on entering this den of the Devil, and from the effects of the pestiferous air which filled the place, we took a survey of the premises. Around the store were arranged casks, barrels and demijohns, some of which were labeled as follows: MAN-KILLER, MANIAC BEVERAGE, ORPHAN-MAKER, SOUL-DESTROYER, THE DEVIL'S SYRUP, DRUNKARD'S COUGH AND DELIRIUM TREMENS, ETC., ETC. We noticed also several signs nailed to the wall, a few of which bore the following inscriptions: MEN TRAINED HERE FOR THE GALLOWES; LESSONS GIVEN IN SUICIDE; CHILDREN INSTRUCTED IN THE ROAD TO DEATH. Directly over the place where Wilbar stood were suspended a skull and cross-bones. On the shelves above the casks and barrels were placed bottles, and we saw a creature, which resembled the Devil in miniature, occasionally thrusting his head from the necks. This we supposed to be the "Bottle Imp."

Near the Devil was a caldron of flaming liquid, which we afterwards discovered was filled from the Devil's own mouth, boiled down, bottled and labeled LUCIFER'S ELIXIR. We had thus far surveyed the place, when the door opened at our side, and a young, blustering man, with a red face and bloodshot eyes, stepped up to a cask labeled THE DEVIL'S SYRUP, and with an oath swallowed the entire glass. We easily recognized this man

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by his swaggering gait and horrible profanity. We have often seen him engaged about the store, serving at times as an under clerk. Another immediately entered and called for a glass of SOUL-DESTROYER. He drank and took his seat by the stove. A moment after, the door was again opened, and a miserable wretch staggered in; his hair was matted together, his eyes horribly swollen, his clothes torn and ragged, the very picture of despair. With a desperate effort he reached the counter and called for a glass of MANIA A POTU. An old man with spectacles approached towards the cask behind which we were concealed, and drew from it a glass. We held our breath until he left, for we discovered him to be the very man who once stood up in court and testified he had never sold in this store a single drop of MANIA A POTU. He administered the dose to his victim, who immediately became a raving maniac.

Customers now flocked in, some cursing and swearing, others quarreling and fighting. Among the number was a young man who stepped up to the counter and called for a glass of LUCIFER'S ELIXIR. At this moment a fiendish chuckle was heard, and Wilbar, looking towards the Devil, clapped his thumb upon his nose, and with a significant look which was answered by his Majesty, proceeded to pour out the burning liquid. The young man drank to the very bottom of the glass, and with a horrid yell fell down dead upon the floor. His pockets were immediately rifled of their contents, and lest life should not be entirely extinct, another glass was poured down his throat. A rustling was now heard upon one of the shelves, and one of the Bottle Imps was heard to say, "*The Dew Drop Man*," whereupon the dead body was left, and all hands rushed to the door, having armed themselves with rotten eggs and rotten apples, doing, as we afterwards learned, but little harm.

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The hellish laugh of the Devil, the screeching of the Bottle Imps, the hissing of the caldron, and the gibberish of the customers interrupted us in our dream, and we awoke. "WAS IT ALL A DREAM?"

The case was tried at New Bedford, Mass., in November, 1845, before Judge Samuel Hubbard in the Supreme Judicial Court.

The defense maintained that the article was justifiable, and that it was only a picture, though faithful and true; moreover, that the plaintiff was carrying on a business in violation of law and, for that reason, if for no other, had no right to demand, through the instrumentality of that selfsame law, compensation on account of an alleged libel upon him as proprietor of such illegal business.

A. Bassett and Timothy G. Coffin represented the plaintiff. Henry B. Stanton and T. D. Eliot appeared for the defendants.

The only speech delivered at this trial which was preserved to posterity was that of Mr. Stanton, which was afterwards published by *The Dew Drop* in an effort to serve the temperance cause.

Argument of Mr. Stanton

GENTLEMEN OF THE JURY:

POSSIBLY the precise questions which this case presents for your decision have never before been submitted to a jury of this Commonwealth.

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The main questions here to be settled are intimately connected with one of the leading moral enterprises of our age, an enterprise which enlists the warmest feelings of large masses of men, and concerning which our fellow citizens entertain opinions as varied and contradictory as ever found lodgment in the human brain. It would be too much to presume that you, gentlemen, have not adopted some of these opinions and participated to some extent in this feeling. I pray you to be on your guard and let no sentiments of favor or aversion towards either of the parties now at your bar, obtrude into this temple of justice and influence your decision. Let this cause be decided on its true legal merits.

What, then, are the questions which it is your duty to decide? They are not, I apprehend, whether the temperance reform is wise in itself, or judiciously conducted; not whether total abstinence from intoxicating liquors is right or expedient; not whether men should sign the temperance pledge and organize temperance societies; not whether moral suasion alone, or combined with the judicious enforcement of wise laws, is best adapted to secure the great end which all benevolent men desire; not whether this *Dream* is written in good taste and temper, and is, upon the whole, a timely and apt publication; not whether *The Dew Drop* is a valuable auxiliary to the cause of sobriety and sound morals, and the labors of its editors a blessing to the community. No, gentlemen, these questions are not now before

you; and though I entertain long considered and firmly settled opinions in regard to each of them, I am not so far forgetful of my duty as to obtrude them upon your consideration.

The real questions presented here are: Did the defendant publish the Dream, "of and concerning" the plaintiff? If so, is it a libel? If so, has this plaintiff any right to seek redress for such publication, in a civil suit, in a court of justice? If so, have the defendants, during this trial, justified this publication? Have they proved it to be true, according to its fair interpretation? If they have failed in the last particular then what compensation in damages shall they render to the plaintiff on account of this publication?

Was this Dream written and published "of and concerning" the *plaintiff*? On this point, you are to hold the plaintiff to strict proof. If the publication applies only to a class of persons, then the plaintiff cannot maintain his action, even though he be one of that class. He must convince you that he is the person especially alluded to. I contend that this Dream is a vivid and faithful picture of any and every dramshop in the State. No one of Satan's emissaries, who does his master's bidding by ministering to the baser appetites of our nature, has the right to say, "I am the original of this portraiture." Why, then, does William Wilbar claim a monopoly in this fancy sketch? Is his tippling shop pre-eminently "the house of human slaughter"?

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The plaintiff says of himself, "Behold the man!" Is the picture such a true likeness that there can be no mistake as to the original?

Gentlemen, I am fully sensible of the load under which the defendants' case staggers at this precise point! This plaintiff's leading witness has testified that, on reading the Dream, he thought it referred to William Wilbar, because it was such a perfect description of his grogshop — so striking in its general outlines — so apt in its minute particulars! And methinks I hear the plaintiff now saying, "What! Not mean me when you penned this Dream! Why, never did sunbeams more faithfully impress the living lineaments of the human countenance on the daguerreotype plate than this Dream portrays my house of human slaughter in Rum Hollow. Not mean me? Impossible!"

Really, gentlemen, I fear we shall have to abandon this ground of our defense, because all the witnesses represent the plaintiff's establishment as a real hell-hole; and so does the Dream. Gentlemen, we must yield this point. William Wilbar is the recruiting sergeant for perdition in Taunton; he is the crown prince of Rum Hollow; and I despair of convincing you that this Dream is not a faithful sketch of his administration in that realm.

Next, is this publication libelous? Undoubtedly it represents somebody as engaged in a most scandalous, infamous and diabolical avocation, and for the sordid purpose of pecuniary gain; and if the

plaintiff be the person intended, and the publication be false, then there is no amount of damages too great to be wrung from these defendants. There is not one of you, gentlemen, that would have such a paper published of him for all the wealth of Potosi. But if, on the other hand, the publication be true, if it be a faithful delineation of the plaintiff's vocation, then there is no depth of infamy too low for you to consign him to, but your verdict should place a whip in every honest hand, to lash him naked through the world.

But suppose you shall find that the defendants wrote and published this Dream of and concerning the plaintiff and that it is libelous, an important question then arises: Does the plaintiff sustain such relations to the laws of this Commonwealth in regard to the subject matter of this Dream, as entitle him to come to those laws and ask for redress on account of this publication?

I deny the plaintiff's right to maintain this action for the reasons that at the time of the alleged publication of this Dream, he was and had long previous thereto been engaged in the traffic in spirituous liquors, without being duly licensed therefor, according to the Revised Statutes; and that during the same period, he kept a tippling house and dramshop, in violation of the laws of this Commonwealth, and that the publication was made of him solely in his vocation as such a trafficker, such a keeper, such a violator of the laws.

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I submit that, both by principle and authority, this plaintiff cannot come to the law for aid in obtaining damages for what is published of him in regard to his agency in a business in which he transgresses that law, no matter how libelous the publication may be.

As between the Deity and His subjects, human government is a divine institution. But, as between man and man, the ruler and the ruled, human government is, for all the purposes of this argument, a contract. Like other contracts it has its consideration, its conditions precedent and subsequent. For instance, the Government confers benefits and imposes burdens on its subjects. The bearing of the burdens by the subject is the condition precedent on which the Government confers the benefits upon him. The Government extends its protection to the citizen, and exacts obedience to its requirements from him. The one is a consideration for the other. The yielding of the obedience is the condition precedent on which the protection is extended. The Government wards off aggression upon the rights of the citizen, and imposes restraints upon his conduct towards itself and his fellow citizens. The submitting to the restraint is the condition precedent on which the Government binds itself to ward off the aggression.

All righteous Government among men is based on the reciprocal discharge of duties. Justly does human government, echoing the Divine, say to its

subjects, "This do, and thou shalt live." The refusal to discharge these reciprocal duties brings retribution in its train. If the Government fails to extend protection to its subjects, open insurrection against its authority, or successful revolution, is the consequence sooner or later, as the history of Nations, written in blood, proves. The injustice of taxation without representation, the imposing of burdens without corresponding benefits, was the cause and the justification of our own glorious revolution. On the other hand, if the citizen refuses to bear the burdens, to yield the obedience, to submit to the restraints which the Government imposes, then fines, imprisonment, death itself, are the consequences.

The plaintiff in this case was living in the hourly violation of one of the conservative laws of this Commonwealth. In so doing, he was preying upon the vitals of society, sapping the foundations of morality, undermining the social edifice. If all his fellow citizens should do as he was doing, we are a tribe of anarchists, a horde of barbarians, a nation of bandits. An editor libels him in this his vocation; holds it and him in respect to it up to the public detestation. For once in his life this contemner of the laws, this enemy of social order, enters the sanctuary of the law, not to repair the breaches he has made in its walls, not to offer himself a sacrifice on its altar for his crimes, not to do homage to the Deity which impartial justice has enthroned there;

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but to invoke the aid of the law in his behalf in regard to the very matter in which he has trampled upon the law and set it at defiance!

What, I pray you, has this law to give to the man who invokes its aid under such circumstances? It owes him nothing but punishment for his offenses. If he has been libelled, it is his own rebellious hand which has plucked down scorn and infamy on his own head. He is eating the fruit of his own doings. Let him be filled with his own devices. He has sown to the wind; let him not shrink from reaping the whirlwind.

William Wilbar, in respect to the subject matter of the alleged libel, refuses to bear the burdens which the law imposes. Why should he enjoy its benefits? He scoffs at its requirement of obedience. Why should he be sheltered under its protecting wing? He breaks loose from all restraint upon his conduct in this regard, hurls ruin and death round the land, defies the penalty for his crimes. Why should the law, which he thus despises and contemns, ward off aggressions upon him? Does he dare to come to a government of law, and ask it to aid him in obtaining damages for a libel published of him in respect to his agency in the sale of spirituous liquors? Why, the law, in this regard, is his worst enemy. It has long been waiting to get him within its reach, that it might scathe him with its retributions. He pollutes its sanctuary with his presence. Does he flee here for protection? His asylum shall

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be his grave. As plaintiff in this action, he is an outlaw. And yet he comes here, and has the brazen audacity to ask your Honor and this jury to put money in his purse because a law-abiding citizen has, in characters of fire, blazoned abroad his law-despising, man-destroying, heaven-daring vocation. Let the Bench frown upon him. Let the jury box flash its indignation around him. Let him be placed outside this temple of justice which he defiles, and there, clad in sackcloth and ashes, do penance for his legal transgressions and his moral crimes.

Of course, I do not say that Wilbar should have no protection from the law, that he should be subjected to assaults and robberies with impunity. He is a member of society, and however unworthy he may be, society owes it to itself that it protect him in these respects. But I speak of him as the plaintiff in a civil action for damages for a libel on him in regard to his agency in an unlawful pursuit. Surely, there can be no principle of law more sound or salutary, than that a party who pursues an illegal vocation shall not recover damages for a libel upon may be, society owes it to itself that it protect him to take advantage of his own wrong, nor will it aid him in making money by his own transgressions. For him and his libeller, so long as the quarrel is confined to them, the law has nothing to give, and from them it has nothing to take. It lets them alone, and will aid neither one of two such wrongdoers. Undoubtedly a different rule obtains in criminal

prosecutions for libel. There the Government has its rights, and the mere illegality of the party's vocation will not, of itself, constitute a defense for a libel upon him in that vocation, though perhaps this fact might mitigate the punishment in case of conviction.

There are many legal maxims and propositions of general application, which have their origin in those foundation principles of impartial justice, from which I deduce the rule which I submit is applicable here. "No man shall take advantage of his own wrong." "He who would have equity must do equity." "The law permits no man to stipulate for iniquity." So, the courts will not enforce contracts when founded on a consideration *contra bonos mores*. Nor will they aid the party, who has paid such a consideration, to recover it back, even though the other party refuse to fulfill the contract. Nor will they aid either one of two gamblers, or sustain a party who sues to recover a wager. In the language of Lord Mansfield, courts of justice will not so far forget their dignity as to stoop to aid either one of such parties. So the courts will not, in an action for assault, sustain the plaintiff who was the aggressor. In all such cases they dismiss the party with the consoling maxim, *damnum absque injuria*.

In 2 *Starkie on Slander*, it is said: *The plaintiff cannot recover if the vocation in which he is libelled be an illegal one.*

In 3 *Stephens' Nisi Prius*, 2222, the rule is laid

down thus: *An action cannot be maintained for anything written against a party concerning his conduct in an illegal transaction.*

A leading case in support of this principle is *Hunt v. Bell*, 1 *Bingham's Reports*. The question was there elaborately argued, and the Court unanimously declares that a person who pursues an illegal vocation has no remedy by action for a libel regarding his conduct in such vocation.

In *Tibart v. Tipper*, 1 *Campbell's Reports*, 351, it is said by Garrow, that in an action for a libel upon an author, Lord Kenyon admitted evidence of the nature of the plaintiff's works; and it appearing that they were themselves of a libellous and scandalous description, his Lordship threw his parchment at his head, and dismissed him from the Court with infamy.

There is also the celebrated *Commonwealth v. Cheever* case, where the Attorney General lays down the rule thus: *What the law allows as lawful, it protects the citizen in doing. And when the people, by the law, declare that no man shall make rum, then if the distiller is libelled, he has no cause of complaint.*

Infer not, gentlemen, that the defendants are seeking to escape through some technical flaw which ingenuity has found for them. They are here to meet this case in all its aspects. On every point which it presents, they ask for no mercy and they will show no quarter. They defy the plaintiff and tell

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him he shall have ample satisfaction on every issue tendered. But he has dared to summon them into a court of law, and they will hold him to its most stringent rules and "cavil on the ninth part of a hair." They will teach him that as respects the issue he tenders to them at this bar, he has no rights here. They will brand him "Outlaw!" The sanctuary where he has fled shall become the altar on which he is offered up. He has invoked justice. Let him have it. It shall be to him a consuming fire. That the defendants' triumph may be complete they will waive all objection to his forcible entry, never asking *quare clausum fregit*, and give him a *locus standi* in Court, and then, by proving the truth of the libel, will drive him in disgrace from your bar.

"Lay on, Macduff;
And damn'd be he that first cries, Hold! Enough!"

Was this dream written and published of the plaintiff, solely in his vocation as a dealer in spirituous liquors and the keeper of a tippling-house in violation of law? Or, did the defendants in their publication travel out of the line of his business and attack him in other respects? And is this Dream, when subjected to a fair interpretation, true? Is it, when its real meaning is ascertained, a justifiable criticism upon the plaintiff's business?

If we satisfy you that this publication is true, we are entitled to your verdict. It accords with the

common sense of mankind, as well as the law of the land, that in civil actions for libel the establishing of the truth of the alleged libel constitutes a complete defense to the action.

You are aware of the grounds on which we base this part of our defense. We have set forth on the record that this publication was made solely in regard to the traffic in spirituous liquors in tippling-houses and dramshops, that the plaintiff was engaged in such traffic, that the publication was not a literal description of scenes which had transpired, but an allegorical description of the nature and tendencies of such traffic, and of the effects of the excessive use of such liquors, that the terms and epithets employed in this publication were not literal descriptions of the persons or agents engaged in such traffic, nor of the kinds of liquor sold by them, but allegorical and metonymical descriptions of the occupation of such persons or agents and of the nature of tendencies of such traffic, and of the effects of the excessive use of such liquors; and that, as thus understood, the publication is true, and was a justifiable criticism upon the plaintiff's vocation.

Let us now examine this piece of writing, and search out its meaning. It is to be read and construed by you, sitting as jurors, precisely as you would read and construe it at your own firesides. In entering a court of law, it has brought with it no new rules of construction. It purports to be an allegory. It bears for its caption the words, "A Dream."

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This kind of writing is among the earliest known to the history of letters. In every age it has been a common mode of conveying thought and feeling. Dr. Campbell, in his celebrated work on the philosophy of rhetoric, says the reason for this is that it "addresses itself to the natural mind of man." It enters largely into every species of composition, sacred and profane. To it we are indebted, under Divine inspiration, for some of the most beautiful, sublime and instructive passages in the Bible. It is the foundation of all poetry, whether it be the majestic verse of Milton or the simple ballad of Burns. Its occasional introduction kindles a smile on the face of the gravest essay, while its more constant use never wearies. It always charms in the lighter novel and tale. In adopting this kind of writing "to hold the mirror up to nature; to show virtue her own feature, scorn her own image," the defendants have but obeyed the instincts of our common humanity.

Let me point out one or two of the principal rules which should guide us in the interpretation of this species of composition. It always has a meaning, but it is not *prima facie* a literal meaning. It should never be subjected to a forced construction. Nor should it be made to contradict itself, by construing one portion of an entire piece literally, and the rest figuratively. It should be construed as a whole, and in consistency with its general scope and tenor.

The reader is bound to take it for what the writer

intended it to be, unless compelled to put another interpretation upon it. To this end he should get at the mind of the writer, the scene before him, and his object and aim.

The law, in actions of libel, always asks, what did the writer mean—how shall we understand him? And the best criterion to decide these questions is to inquire, how would an intelligent reader, who was acquainted with the subject matter and with the feelings of the writer, and who appreciated his object, and was skilled in that sort of composition, have understood him.

In the light of these rules, let us interpret this Dream. The first paragraph shows the motive of the writer. "As we sat in our room, thinking what more could be done to advance the cause of temperance, we fell asleep," etc. There he exhibits his naked heart. Let him have the benefit of its philanthropic pulsations. What is the evil which he would remove? Intemperance, the master-curse of our country, a curse which drains it of \$140,000,000 annually, to purchase a beverage which refreshes not, but poisons, which fills our alms-houses with 250,000 paupers, which crowds our jails and penitentiaries with 50,000 criminals, which instigates 200 murders annually, which causes two-thirds of the suicides and one-third of the insanity in the nation, destroying the bodies, dethroning the reason and ruining the souls of the victims, excites half the quarrels and causes half the accidents which distract

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and appall society, which recruits an army of 500,000 American drunkards, curses to themselves, pests in the community, entailing disgrace and poverty and wounds and sorrow on countless relations and friends, which mantles the nation in mourning by consigning annually to premature graves 40,000 of its citizens, which, in a word, stands out prominently in the midst of the innumerable physical, social, mental and moral evils which afflict our race, towering aloft, the monarch of the realm.

To do what they can to arrest the march of this abomination of desolation, my clients have consecrated their lives. They saw this plaintiff busily employed in swelling this tide of ruin. They sketched his likeness and hung it up before the public eye, that strong and virtuous men might abhor him, and weak and erring men might shun him as they would the walking pestilence. For this they deserve not only the verdict of your acquittal, but the tribute of your applause.

In the same paragraph, the defendants describe the dramshop of the plaintiff as "That house of human slaughter," and in another as "This den of the Devil." These are figurative expressions, and I only mention this because, being in the introductory part of the Dream, they furnish the key of interpretation to unlock the meaning of the whole.

Properly understood, was not Wilbar's shop a house of human slaughter? From all the testimony

it appears that he was a large dealer in intoxicating liquors, the largest in "Rum Hollow." Signs bearing the words, "Rum," "Brandy," "Gin," were suspended on his door, giving token of what was on sale within. Shameless exhibition of his infamous trade! His shop was crowded with hogsheads, barrels, kegs, decanters, and bottles of these liquid poisons. Night and day was it haunted with miserable creatures, to be counted by scores in every stage of intoxication. The old drunkard, from whose brow inebriety was effacing the last lineaments of God's image, was there. The youth, sowing the first seeds of that appetite whose ripe fruits would poison body and soul, was there. Graceless woman, exchanging her virtue for rum, was there. Unsuspecting childhood, just crossing the threshold of temptation, was there. Brawling, quarreling, blasphemy, were all there.

The streams of liquid fire were unsealed, and constantly running, every hour in the day, not excepting the sacred Sabbath. At night the wretched customers of this plaintiff, who were too intoxicated to stagger to their affrighted homes, were pitched out of the doors, often by the dozen to wallow in the mud or chill in the snow, while the inhuman author of their miseries closed the gates of hell and went home to sleep, not in the penitentiary, but in his own bed, with none to molest or make him afraid.

Was it not a house of human slaughter? Was it not the temple of Drunkenness, where this plaintiff,

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as ministering priest, offered up the daily sacrifice
to his remorseless deity?

Says the poet Young:

“In our world, Death deposes
Intemperance to do the work of age;
And, hanging up the quiver nature gave him,
As slow of execution, for dispatch
Sends forth licensed butchers; bids them slay
Their sheep (the silly sheep they fleeced before)
And toss him twice ten thousand at a meal.

O what heaps of slain
Cry out for vengeance on them!”

The Dream goes on to say, that “The presiding genius of the place was the incarnate Devil. On an elevated seat in the back part of this indescribable hell, he sat; while ever and anon there issued from his mouth flames of fire which withered and scorched the deluded wretches who had been enticed within,” etc.

It is a remarkable fact that all writers, sacred and profane, serious and comic, prosaic and poetic, have installed the Devil as the presiding deity over the orgies of Drunkenness.

The prophet Isaiah, in lamenting the intemperance of his time, says, after describing the drunken feasts of the Jews, “My people are gone into captivity, and hell hath enlarged herself.” Paul, in warning the Corinthians against intemperance, says, “Ye cannot drink of the cup of the Lord and the cup of devils.” Shakespeare puts into

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the mouth of Cassio, after a debauch, these words: "O thou invisible spirit of wine, if thou hast no name to be known by, let us call thee — devil." Again! "Every inordinate cup is unblessed, and the ingredient is a devil." The writers of fiction and poetry furnish innumerable illustrations of a like character.

I quote but one more, which, though long, is graphic. It is by Makay, a living British poet, and is entitled "The Dream of the Reveller":

Around the board the guests were met, the lights above
them gleaming,
And in their cups replenished oft, the ruddy wine was
streaming;
Their cheeks were flushed, their eyes were bright, their
hearts with pleasure bounded,
The song was sung, the toast was giv'n, and loud the
revel sounded;
I drained my bumper with the rest, and cried, "Away
with sorrow,
Let me be happy for to-day, and care not for to-
morrow!"
But as I spoke, my sight grew dim, and slumber deep
came o'er me,
And 'mid the whirl of mingling tongues, this vision passed
before me.

Methought I saw a demon rise, he held a mighty bicker,
Whose burnished sides ran daily o'er, with floods of burn-
ing liquor;
Around him pressed a clam'rous crowd, to taste this
liquor greedy,

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But chiefly came the poor and sad; the suff'ring and the
needy;
All those oppressed by grief and debt, the dissolute and
lazy,
Blear-eyed old men, and reckless youths, and palsied
women crazy.
"Give, give!" they cry, "give, give us drink, to drown
all thoughts of sorrow,
If we are happy for today, we care not for tomorrow!"

The first drop warms their shivering skins, and drives
away their sadness;
The second lights their sunken eyes, and fills their souls
with gladness;
The third drop makes them shout and roar, and play
each furious antic;
The fourth drop boils their very blood, and the fifth
drop drives them frantic.
"Drink!" says the demon, "drink your fill! drink of
these waters mellow,
They'll make your bright eyes blear and dull, and turn
your white skins yellow,
They'll fill your home with care and grief, and clothe
your back with tatters,
They'll fill your heart with evil thoughts, — but never
mind — what matters?

"Though virtue sink, and reasoning fall, and social ties
dissever,
I'll be your friend in hour of need, and find you homes
forever;
For I have built three mansions high, three strong and
goodly houses,
A work-house for the jolly soul, who all his life carouses.
A hospital to lodge the sot, oppress'd by pain and anguish.

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A prison full of dungeons deep, where hopeless felons languish.

So drain the cup and drain again, and drown all thought of sorrow,

Be happy if you can to-day, and never mind to-morrow!"

But well he knows, this demon old, how vain is all his preaching,

The ragged crew that round him flock, are heedless of his teaching;

Even as they hear his fearful words, they cry with shouts of laughter,

"Out on the fool! who mars to-day with thoughts of an hereafter.

We care not for thy houses three, we live but for the present:

And merry will we make it yet, and quaff our bumpers pleasant."

Loud laughs the fiend to hear them speak, and lifts his brimming bicker,

"Body and soul are mine!" quoth he — "I'll have them both for liquor!"

Was not the author of our Dream right when he installed the incarnate Devil as the presiding deity of William Wilbar's dramshop?

The Dream further says, "Around the store were arranged casks, barrels and demijohns, some of which were labelled as follows: Man-Killer, Maniac Beverage, Orphan-Maker, Soul-Destroyer, The Devil's Syrup, Drunkard's Cough, Delirium Tremens, etc."

Of course, this is not literal. It is the use of the

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rhetorical figure called metonymy, that is, putting the effect for the cause. The passage simply means that the excessive use of the liquors sold by the plaintiff often produced the effects named in these labels. As thus interpreted, the passage is true.

Ardent spirits are a "man-killer." They destroy life by producing disease. What a fearful list of diseases produced by intemperance did Dr. Jewett give us from the stand! He also stated that the intemperate patient was the more difficult to cure, his habits baffling the skill of the physician.

The celebrated Dr. Rush says, "Spirituous liquors destroy more lives than the sword. War has its intervals of destruction; but spirits operate at all times and seasons upon human life." He adds that "ardent spirits dispose the system to disease of all kinds." To the same effect is the testimony of all the distinguished physicians of this country and England, and of all the leading medical societies in both nations.

Ardent spirits also instigate to murder, produce death by suicide, accidents and various other means, and so are properly called "man-killer."

Sir Matthew Hale, the great light of criminal jurisprudence, says, "If all the murders, man-slaughters and rapes which have been committed during the 20 years I have been on the bench were divided into five parts, four of them would be found to have resulted from intemperance."

Says a distinguished French lawyer, "Of 1129

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murders committed in France during four years 446 were the consequence of quarrels in tippling-houses."

The Coroner of London said recently, "I think intoxication is the cause of one-half the inquests that are held in the metropolis."

Rev. Dr. Cathcart, of Pennsylvania, kept an account of all the murders committed in this country in one year. He says, "of the 209 murders, a very large proportion are known to have been occasioned by the immediate use of ardent spirits."

The late Chief Justice Parsons said, "I have been so long in the habit of hearing criminals of all grades refer all their miseries to intemperance, that I have ceased to ask them the cause of their ruin."

S. Chipman, Esq., who visited every penitentiary, jail and workhouse in the state of New York, in search of facts, gives it as his opinion that "more than five-sixths of the persons committed on criminal charges are intemperate."

Hugh Maxwell, Esq., of New York city, has stated that of the twenty cases of murder tried by him while prosecuting attorney, every one was caused by intemperance. I have lying before me a mass of testimony to the same effect from judges, prosecuting officers, and wardens of State prisons, all over the country. I will not weary you with detailing it.

Rev. Mr. Curtis, the worthy Chaplain of our own State prison, has told you from the stand that, in his opinion, from an observation of the causes of

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crime for twenty years, more than three-fourths of all the crimes, from petty assault up to red-handed murder, are attributable to intemperance.

But we find proof lying at the very door of the plaintiff's shop, that rum is a man-killer. The poor wretch Kenny, a regular customer of Wilbar's, staggers from his counter and in two days dies in a horrible fit of delirium tremens. Poor Barton, another constant customer of Wilbar's — whose widow with her weeds fresh upon her brow has told you the sad story of her husband's fate — seizes an axe in a fit of delirium tremens and attempts to slaughter his wife and children, and finally dies in the Worcester Asylum. Truly is rum a man-killer, and William Wilbar traffics in "distilled death and liquid damnation."

So are ardent spirits a "Maniac Beverage." Dr. Jewett has told you they are a fruitful source of insanity. The reports of the Worcester Asylum abundantly attest this truth. Of the 272 patients admitted in one year, the insanity of 56 was caused by intemperance, and I select but an average statement. Out of 495 patients admitted into the Lunatic Asylum, in Liverpool, 257 came to that state through intemperance. Well might the drunken Cassio say, "O that men should put an enemy in their mouths to steal away their brains!" And truly does Holy Writ say of men like this plaintiff, "Cursed is he that putteth the cup to his neighbor's lips!"

So are ardent spirits an "Orphan-Maker." They

make wives widows, and children fatherless. They send both parents to early graves — the father dies with delirium tremens, the mother hides her broken heart in the tomb, the children find their refuge in the almshouse. We may say of this infamous plaintiff, "He hath no children!" for, methinks a father would pity and spare.

Rum is also a "Soul-Destroyer." Well did Rev. Mr. Curtis define the soul to consist of the reason, the will, and the affections. All these, intemperance destroys. Nor can we forget that awful passage of Holy Writ, "No drunkard shall enter into the kingdom of God." Woe to this plaintiff when Divine Justice "maketh inquisition for blood!"

Ardent spirits are "The Devil's Syrup." This is an apt name for what the eloquent Robert Hall called "distilled death and liquid damnation." Wilbar did sell the Devil's Syrup, and he was the Devil's agent.

Rum is the "Drunkard's Cough and Delirium Tremens." Dr. Jewett has described to you the peculiar cough of the drunkard, and has told you that nothing except alcohol produces delirium tremens. So say all the authorities. Of all the diseases which appall mankind, the trembling delirium, the fearful madness, is the most horrible. This terrible insanity summons around the bedside of the tortured wretch all that is loathsome on earth and frightful in hell. Other kinds of madness are often accompanied with pleasing delusions; this never.

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At one moment the sufferer fancies himself covered with disgusting vermin; at the next legions of devils glare upon him and torment him before his time. Methinks the sacred penman must have had this appalling disease before him when he spoke of the wrath of God as "the Cup of trembling" — the cup of tremens! May a merciful Providence never commend to this plaintiff the fearful cup which he so often applied to the lips of his neighbors. May he never meet the fate of Kenny and Barton, whom his murderous vocation sent to the bar of God before their time.

The passage of the Dream on which I have been commenting also states that signs were nailed to the walls of the plaintiff's shop, bearing inscriptions like these: "Men Trained Here for the Gallows. Lessons Given in Suicide. Children Instructed in the Road to Death!"

The same remark applies to this part of the passage as to the other. It is not literal, but is a metonymical description of the liquors sold by the plaintiff — putting the effect for the cause. It is in evidence that by the door of this shop were signs bearing the words Rum, Brandy, Gin, etc. These and other similar liquors were largely sold by the plaintiff. According to our rule of construction this passage of the alleged libel is true.

Ardent spirits do "Train Men for the Gallows." I have already shown that a large share of the murders are caused by intemperance; and, there-

fore, the dramshop furnishes a large share of the victims for the extreme penalty of the law. The rum seller and the hangman stand to each other in the relation of producer and consumer. The one trains men for the gallows; the other hangs them on it.

Intoxicating liquors do "Give Lessons in Suicide." Suicide is self-destruction. Men are suspended by "the brittle thread" over the grave. He who cuts that thread by a single stroke of his own hand and drops into eternity, is a self-murderer. He who wears away its fibres by constant friction, and weakens it, so that it prematurely breaks, is also a self-murderer, a gradual suicide. Intemperance produces both these results. An able medical writer states that more than half the suicides in this country — I now speak of direct and instantaneous self-murder — are committed through the influence of intemperance. As to gradual self-murder, we have the testimony of Dr. Jewett, that in America intemperance by slow but sure steps carries its tens of thousands to an annual grave. Dr. Rush declares that "the constant use of ardent spirits, like a bold invader, seizes on the very vitals of the constitution, and does not give over till it has destroyed its victims." On this point, the testimony of medical men is overwhelming. Then, figuratively, William Wilbar's shop was an establishment where lessons were given in self-destruction. No thanks to him or his accursed trade that half his customers, long ere this,

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have not with suicidal hands opened to themselves the Gate of Fear.

The dramshop does "Instruct Children in the Road to Death." It is in evidence that children were often seen in and around the plaintiff's shop, sometimes in search of a drunken father, sometimes to purchase rum, sometimes as spectators of, or participants in, the Bacchanalian revels over which Wilbar and his partner, the Devil, presided.

Who doubts that intemperance leads to death? Is not the child apt in following the examples of his elders? Solomon says "Train up a child in the way he should go, and when he is old he will not depart from it." Pope's expressive line has become an adage, that as the twig is bent the tree's inclined. Says the same philosophic poet:

Vice is a monster of so frightful mien,
As to be hated needs but to be seen;
Yet, seen too oft, familiar with her face,
We first endure, then pity, then embrace.

The admitted fact that the offspring of intemperate parents are more apt to become intemperate than those of sober progenitors, arises also from this other cause: the appetite for strong drink acquired by the parent is, by natural generation, communicated to the child. This appetite is a disease; and, like many other diseases, is hereditary. Aristotle says, "Drunken women bring forth children like unto themselves." Dr. Darwin thus ex-

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presses himself, "All the diseases arising from drinking spirituous liquors, are liable to become hereditary, even to the third generation, gradually increasing, if the cause be continued, till the family becomes extinct." The celebrated Dr. Caldwell says, "By habits of intemperance, parents not only degrade and ruin themselves, but transmit the elements of like degradation and ruin to their posterity." See also the testimony of Dr. Sewall in his pathology of Drunkenness, and a large accumulation of facts and opinions in the Prize Essay called *Bacchus* — two works which I commend to the careful study of this plaintiff, and which will teach him that his dramshop is the gateway of hell, opening the avenue of death to the old and the young. And if his learned counsel will con them over, he will be satisfied of the truth of the innuendo he has thrown into this part of our Dream, namely, that the plaintiff was engaged in the detestable crime of corrupting the minds and hearts of the youth of this Commonwealth.

This Dream also states that "Directly over the place where Wilbar stood, were suspended a skull and cross-bones." Although the counsel who drew the declaration has twice set forth this passage, he has not seen fit to append to it any innuendoes. He seems to be at fault in divining its meaning. I will assist him in interpreting this part of the Dream. The skull and cross-bones are the emblem of death. They are sculptured on grave stones to tell the

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passer-by that Death has been busy there. How appropriately, then, is this death emblem suspended over the head of the human butcher who slaughters mankind in Rum Hollow!

We have now reached that passage in this publication, where the plaintiff, when driven from every other spot, will take his stand and ask for your verdict. I will read it:

“Customers now flocked in, some cursing and swearing, others quarreling and fighting. Among the number was a young man who stepped up to the counter and called for a glass of Lucifer’s Elixir. At this moment a fiendish chuckle was heard, and Wilbar, looking towards the Devil, *clapped his thumb upon his nose and with a significant look, which was answered by his majesty,* proceeded to pour out the burning liquid. The young man drank to the very bottom of the glass and with a horrid yell fell down dead upon the floor. His pockets were rifled of their contents, and lest life should not be entirely extinct, another glass was poured down his throat.”

I ask you to note here that in his declaration the plaintiff has omitted those words which I have marked in italics.

He insists that, however it may be with the rest of the Dream, the writer has, in this paragraph, departed from the line of the plaintiff’s vocation as a rum seller, and charged him specifically and literally with the crimes of murder and robbery. In his various innuendoes he says this paragraph

means that "the young man drank of a beverage given to him knowingly and maliciously by said Wilbar, whereby he died; that the said Wilbar, by force and arms, did violently and feloniously take the property of that young man, so deceased as aforesaid, and appropriate the same to his own use; that said Wilbar wilfully, wickedly and with malice aforethought, did with force and arms make an assault upon the said young man, and whereby he wilfully and designedly took his life, with intent thereby to rob him of his money, goods and chattels; that by the aiding and abetting of Wilbar, men were wilfully and maliciously killed; that he administered to some person in his shop a deadly poison which caused instant death; that he committed the sacrilegious and felonious act of robbing from the dead," etc.

If you find that by omitting the words "clapped his thumb upon his nose, and with a significant look, which was answered by his majesty," the plaintiff has altered the meaning or changed the sense, or has confused the meaning and rendered the sense doubtful, then he must, so far as this paragraph is concerned, fail in his action; for he has not set out the libel which the defendants published.

The paragraph should be read in the light of the whole article, and in consistency with its general character and scope. When it purports to be and is, in its outlines and its details, an allegory, a dream, you should, before consenting that any part of it

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is a literal statement of events which transpired, be forced to that conclusion.

Now did a young man call for a glass of Lucifer's Elixir, literally? Was a fiendish chuckle heard, literally? Did Wilbar look towards the Devil, literally? Did he clap his thumb upon his nose, literally? Was his significant look answered by his majesty, literally?

Gentlemen, there is not one of you who, at the first glance, does not see that this is a mere fancy sketch, and you must believe the rest of the paragraph to be but a continuation of that sketch. You cannot believe that the writer, with no passport but a comma, leaped suddenly from the airy regions of fancy to the *terra firma* of reality. Then, Wilbar did not literally pour out the burning liquid, for there was no Lucifer's Elixir there. The young man did not literally drink it, for there was no young man there who called for Lucifer's Elixir. He did not literally fall down dead on Wilbar's floor, for he was no more literally there than was the Devil. And, not being there nor falling down dead, another glass of Lucifer's Elixir was not poured down his throat, nor were his pockets rifled.

Thus, gentlemen, all these terrible innuendoes, which the fertile imagination of the learned counsel has conjured up, vanish into thin air on examination, as Macbeth's ghost vanished on being questioned. I think the counsel must have been dreaming when he drafted this part of his declaration. And he

might well go to sleep over a writ three yards long. This, too, will account for his leaving out those words, the very key which unlocks the meaning of the whole passage.

But it may be asked what meaning did the writer intend to convey? This: he was sketching with a free, bold pencil, what might naturally happen, and what has happened thousands of times, in such cursed tippling houses as that kept by William Wilbar. He meant to write it so plainly that he that runs might read it, and a wayfaring man, though a grog seller, need not err in regard to it, that rum murdered men, and that the rum seller who took money from the pockets of his customers and gave them rum in return, was a robber; and, gentlemen, look you there, and Behold the man!

Gentlemen, are you not convinced that this whole publication was written of the plaintiff in his vocation as a dealer in spirituous liquors, in violation of law; and that, in its outlines and details, it is true, and is a justifiable criticism upon his vocation? So ample has been our proof that I feel authorized to brand this Dream, with all its glowing epithets and lines of fire, into the forehead of this man, telling him to wear it as a fitting frontlet, that the world may take knowledge of his character and occupation.

If, however, you should find in favor of the plaintiff, this important question arises: What damages shall he recover at your hands?

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The foundation of the action for libel is, that by the publication complained of, the plaintiff has sustained an injury which he seeks to repair by compensation in damages. In the present case, William Wilbar alleges in his writ, with vast amplitude of statement, that this Dream has injured his business and stained his character; and he comes to your bar and asks for money to repair his losses in trade and reputation.

The plaintiff sets forth in his list of grievances that he "was engaged in a wide and profitable business, that he was diligent in trade, that he was carrying on his business with the reasonable expectation of thereby gaining an honest livelihood and a just preferment and good estimation with all the honest citizens of Taunton, that he was a true, just and faithful citizen of this Commonwealth, that by his diligence in trade he had obtained a good name, fame and credit among his worthy and reputable neighbors, and that these defendants, envying his reputation, and maliciously intending to bring him into public scandal, infamy and disgrace, and ruin his wide and profitable business with those good and worthy citizens of Taunton with whom he was honestly, justly and truly dealing in his occupation, published of and concerning him, in his trade and occupation, this false and infamous Dream, thereby greatly injuring him in his lawful calling, bringing him into great reproach and scandal, and causing him great disturbance and anxiety of mind!"

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Believe me, gentlemen, when I say that I have not been reading from a dream, but from the plaintiff's writ; and that I have given you scarcely a tithe of those allegations of a similar character with which it abounds! Surely, if a twentieth part of this be true, these defendants should expect no mercy from you. But divine inspiration need hardly have told us that "a man seemeth right in his cause, but his neighbor cometh and searcheth him."

Have the defendants, by this publication, injured the plaintiff's wide and profitable business? There is not a shred of proof to support the charge. But suppose it be true. The defendants are entitled to the gratitude of this man for circumscribing, for utterly destroying a business which was ruinous to him, to his customers, to the community in which he dwelt. For every glass of liquor he sold, he was liable to indictment, to fine, to imprisonment. If he had his deserts, where would he be now? All his companions in this diabolical trade could scarcely furnish money enough to pay the debt he owes the Commonwealth for violating its laws. And he is here asking those laws to give him money! They owe him nothing but impoverishment and ruin. Were his life stretched out to the length of Methuselah's, it would hardly suffice to serve out the imprisonment the law would inflict upon him.

Was he diligent in trade? Aye, diligent in making paupers, in robbing the poor of bread, in instigating

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men to commit crimes, in crowding our alms-houses, our jails, our penitentiaries, our insane asylums, our graveyards, with the plundered, maddened and murdered victims of his vocation. And our publication has made him less diligent, more languid in this his trade; therefore, he asks you to put your hands in our pockets and get money for him.

He says we have deprived him of his customers, but he has offered no proof. True, we have shown that two of his constant customers trade no more with him. Kenny, who died of delirium tremens almost at his threshold, will never stand at his counter again. Barton, who went from his shop to die in a madhouse, will trade with him no more. How much money should he be given for the loss of these two customers?

And, was it this Dream which brought him into scandal and reproach among the good and worthy citizens of Taunton? No, it was the reality, not the dream! It was not this publication, but his occupation, which made him infamous. And, in the name and behalf of every good and honest citizen in Taunton, I indignantly deny that by his business he was obtaining among them a just preferment and good estimation. I repel the foul calumny, and tell him that it was through their long-suffering and forbearance that the doors of his pest-house were not forcibly closed long ago.

And did our Dream cause him great disturbance and anxiety of mind? It was high time for some-

thing to fill him with anxious thoughts. The kindly suasion of his temperate neighbors, the tears of the orphans he had made and the beseechings of the widows he had clothed in weeds had not moved him. The quarrels which he daily instigated and the blasphemies which continually rung in his ears had not moved him. The law, at long intervals, waking from its torpor, visited him with its retributions. Still he went on, diligent in his vocation, plundering, torturing, poisoning, adding fresh fuel to consuming fire, without feeling one remorseless pang, one anxious thought. By all that is precious on earth and sacred in heaven, if these defendants have been able to penetrate the seat of feeling in the bosom of this indescribable wretch they are entitled to the applause of men and the favor of God!

But says this writ — and it is a rare production — William Wilbar was a true, just, and faithful citizen of this Commonwealth, pursuing his lawful calling! Gentlemen, this is too bad! Though the hand of every other man should be turned against Wilbar, the arms of his counsel should be stretched out in his defense. And, now, to be taunted by his counsel in open court, with pursuing *a lawful calling*! Why, it is a violation of the Constitution of the United States, which declares that cruel and unusual punishments shall not be inflicted.

Gentlemen, what injuries have we inflicted upon the plaintiff as a rum seller, which entitle him to take money out of our purse? He has long enjoyed

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special privileges; and is he not content with those? By his business, he can commit assaults and robberies; he can make paupers and felons, and not be held responsible therefor. He can make rich men poor, wise men fools, sober men crazy, virtuous men felons, without let or hindrance. If you and I *call* a man a bankrupt, or a madman, or a thief, or a robber, we must respond in damages in action of slander. But he can *make* men bankrupt, madmen, thieves and robbers, aye, and by diligence in trade can kill them, too, and lo, if you and I say so and print it, he can be the plaintiff in a libel suit, and we must defend ourselves as we can. This man can levy taxes on the community, and the people pay them with a quiescent humility that would do honor to a starved and scourged donkey. If this plaintiff, for the sake of gain, sells worthless or poisonous articles, he can take money therefor, while for doing the same thing, the provision dealer is indicted and punished. If this plaintiff, for gain, infuriates his customers with rum, knowingly and wilfully, and they commit batteries, larcenies and murders, he, unlike other accessories, escapes, while the law inflicts its vengeance upon the poor dupe of his trade and occupation, letting the principal go and punishing the agent — yea, it may be, permitting the seducer to sit upon the very jury which condemns his victim.

William Wilbar has participated largely in the enjoyment of these special privileges; but not con-

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tent with the advantages which these monopolies confer upon him in his trade and occupation, he has the modesty to come to this court and to ask for more. He has become so accustomed to living by plunder without law, that he has grown bold and hopes to plunder by aid of the law.

And for what acts of his rum-selling life does he ask you to give him money? Let him make out his account current with the defendants, the community and the law. I ask for the items. How much will you give him for the diseases he has instilled into the bodies of his customers, by his diligence in trade? How much for reducing them to beggary? How much for palsyng their limbs, blighting their minds, ruining their souls? How much for breaking the hearts of their widowed wives, and sending their starved children to the alms-houses? How much for destroying Kenny and Barton? How much for undermining the foundation of social order, trampling on the laws, and contributing all in his power to swell the tide of intemperance which pours over the land, blasting everywhere, cursing everything? Before I consent that my client pay him one farthing, I demand his bill of particulars "for work and labor done, and materials for the same provided."

But, gentlemen, if money must be forthcoming for this plaintiff, of whom will you exact it? Surely you will not go to the poor widow of Barton and ask her to sell her weeds to raise money for the destroyer of her husband. You will not do that. Will you

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go to the penniless heirs of Kenny, whom Wilbar robbed of a father, and ask them to take the bread from their mouths and give it to him? You will not do that. Will you go to the poorhouses, and jails, and workhouses, and insane asylums, and penitentiaries, and search out those whom his trade has sent thither, and ask them to contribute money to the wretch who has ruined them? You will not do that. Will you go to the graveyards, to which his trade and occupation sent their annual contributions, and disentomb the dead, and sell their skeletons to the anatomist, to raise money for the keeper of a house of human slaughter? You will not do that.

Passing by all these, will you come to the law-abiding, generous-hearted, gallant young philanthropists now at your bar, who, in the discharge of a high civil and moral duty which they owed to society in sustaining the supremacy of the laws and restraining immorality and alleviating human misery, painted with a bold pencil this monster and his den, and held the picture up to the public gaze, that all men might know him and abhor him and shun him — will you come to them and exact money and give it to this vile wretch? No! You will not do that!

Let me remind you, gentlemen of the jury, that public virtue, sound morality and the welfare of society, are on trial here today and anxiously await your decision. Pursued, overtaken, outraged, these precious interests flee to you for succor and protec-

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tion. Let the halls of Justice be their inviolable asylum. Let them here find their home and their friends.

The cause of society is on trial. Intemperance, the pestilence which walketh in darkness and the destruction which wasteth at noonday, covers the land with sadness and shame, with sin and sorrow. Shall honest, generous, well-directed efforts to stay its march be visited by punishment, while those who minister to its virulence go unwhipped of justice? Then has judgment fled to brutish beasts and men have lost their reason.

The supremacy of the laws, the authority and perpetuity of civil government, are on trial. I cannot but regard these constant and unpunished violations of our license laws as tending to undermine the very basis on which our free institutions rest. These violations are injurious to the cause of sobriety. Our fathers erected these barriers all around our borders, to beat back the waves of intemperance, so that they might not overwhelm our good old Commonwealth. And though the advancing knowledge and enlarged experience may have disclosed many defects in them, yet the safety of the State requires that they be firmly upheld till stronger and higher barriers are erected in their stead.

This plaintiff has combined with the thousands of rum sellers in Massachusetts, to prostrate these walls of defense, and let in the surges of drunkenness to sweep unrestrained through the land. He is a bad

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citizen, the enemy of his country, and is guilty of moral treason. An importer of famine and pestilence would be less guilty. The man who should give succor to our foes in war, or open the gates of our citadel to hostile armies, would not more deserve the name of traitor.

But I regard these repeated violations of our laws as still more injurious, because of the dangerous tendency of their example. Beware of bad precedents. If the license laws may be broken with impunity, so may any other law on our statute book. Witnessing the indifference which so lamentably prevails in regard to the resistance of the laws by the rum sellers, other classes of men will be emboldened to set other portions of our Code at defiance, till pillar after pillar of the social edifice falls, and the whole becomes a mass of shapeless ruins. Said the great Lord Chatham when resisting the illegal encroachments of the British Crown upon the liberties of the people, "This I know: Where law ceases, there despotism begins."

Let us, gentlemen, regardless of our opinions on the subject of temperance, band together, hand in hand, to save our civil institutions from prostration. Impelled by the instincts of self-preservation, let us stand by the law and vindicate its supremacy. The jury box is the guardian of social order. Prove not recreant to your trust here. Teach this plaintiff that for him and his clan you have nothing to give but retribution and infamy.

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The liberty of the press is also on trial, and waits for your verdict. Of all the instrumentalities for good or for evil, which exist among a free people, the liberty of the press should be watched and guarded with the most jealous care. Often has it been the last resort of freedom in its conflict with tyranny.

Said Milton, the republican of Charles the First's time, "Give me the liberty to know, to argue and to publish freely, above all other liberties."

Said the illustrious Chatham, "Let there be a weak Prince, a wicked Minister, and a corrupt Parliament, and give me a Free Press, and the Constitution is safe — the liberties of the people are secure."

The brightest jewel in the professional diadem of the great English advocate Erskine, was his successful resistance to the rule of law expounded by the judges, that in criminal prosecutions for libel the proof of the truth of the writing and of the good motives which caused its publication were not a complete defense. By the aid of Charles James Fox, the great commoner, this once discarded rule became the law of the British Empire; and now the people of England may well breathe their discontents, may thunder their denunciations even, in the very ear of Majesty.

Justly prizing this great right, our ancestors provided guarantees for its protection in the organic law of the Republic and of this Commonwealth. The Constitution of the United States provides that

The Defense of the Dream

"Congress shall pass no law abridging the liberty of the press."

These defendants are the editor and the printers of a public newspaper. Jefferson denominates the men of this class, sentinels on the watchtowers of freedom. In publishing the article for which they are now arraigned, were they true or false to their trust? The plaintiff was a traitor to his country and his kind. Human and Divine law were at war with his vocation. Virtue, humanity, law and religion had appealed to him to abandon that vocation. They had appealed in vain. These defendants, deeply moved at his crimes, and regarding their high mission as conductors of a free press, gave utterance to the indignant voice of an outraged and long-suffering public sentiment. And by Heaven, if they have been able to arrest or impede him in his guilty career, they are entitled to his thanks and your verdict.

But, gentlemen, I have spoken long enough. From all the testimony in this case, the plaintiff must be regarded as the keeper of a dramshop of more than an average degree of infamy, and the portrait shadowed forth in this Dream as only a faithful likeness of the man and his occupation. If the features be Satanic — if the general impress and mien be fiendish — if every virtuous eye which scans it kindles with indignation — if its exhibition has sunk the original so low in public esteem that even contempt scorns to follow him — the fault is his

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own — not the limner's. In the discharge of a duty which they owed to God and man, they have sketched him faithfully, nothing extenuating, nor setting down aught in malice.

By your verdict, then, stamp this Dream, with all its blistering epithets, upon the audacious forehead of William Wilbar. Forget not, that in reaching your bar he has trodden that law in the dust which gives protection to your rights and dignity to your office. He has poured contempt on its majesty, scorned its precepts, defied its penalties, and despised its ministers. So far from shielding him by your verdict, drive him hence with indignation, and let him thank Heaven that he was not scathed by its vengeance when he dared to invade the Temple of Justice on such an errand as that which brought him here.

The jury found for the defense.

It may be said, in passing, that Mr. Stanton was an eloquent anti-slavery as well as temperance advocate, actively taking part in both movements. He made many speeches in America and England, and more than once was mobbed. He was instrumental in the founding of the Republican party, and was also a journalist and author, for a number of years editing the *New York Sun*.

He was the husband of the famous woman suffrage leader, Elizabeth Cady Stanton.

The Trial of Ann K. Simpson

THE trial of Ann K. Simpson for murder, which took place in November, 1850, at Fayetteville, N. C., before Hon. W. H. Battle, Judge of the Superior Court of Cumberland County, is often spoken of as one of the most celebrated trials in the history of that State.

Mrs. Simpson was charged with poisoning her husband, Alexander C. Simpson, who had died in November of the preceding year, evidently from the effects of arsenic.

Soon after his death a warrant was issued for the arrest of the widow, and she fled to Havana, returning later and surrendering to the authorities.

Quite a distinguished array of legal talent appeared at the trial. Solicitor T. M. Ashe and James C. Dobbin represented the State, while Robert Strange, Warren Winslow, Duncan K. McRae and John Winslow appeared for the accused.

Mr. Ashe afterwards became a Senator of the Confederate States, later was a member of the U. S. Congress, and for nine years was on the Supreme Court bench of North Carolina.

Mr. Dobbin had been a member of Congress and later became Secretary of the Navy.

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Mr. Strange was a former Superior Court Judge, had been a member of the U. S. Senate and was an author of no little repute.

Mr. Warren Winslow was prominent in the political affairs of the State, afterwards becoming presiding officer of the State Senate, later being Governor.

Mr. McRae subsequently went to Paris in the U. S. consular service. He was Colonel of the Fifth N. C. Infantry in the War Between the States.

Much interest was manifested by the people throughout the trial, due largely to the brilliancy of the counsel engaged and to the fact that the defendant came from one of the best families of the State and was a woman of most remarkable beauty.

The evidence offered by the prosecution was circumstantial. The defense introduced none, thereby obtaining the concluding argument.

In all, five speeches were delivered to the jury, two for the State and three for the accused. Each one is given here.

Speech of Mr. McRae

MAY IT PLEASE YOUR HONOR, GENTLEMEN OF THE JURY:

I DO not come among you today as a stranger, for it was here that I spent my early years, and here the associations of my youth are concentrated. Today I find here as the tenant of a cheer-

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less dungeon one whom I knew in those early days as combining beauty of person with attraction of manner and openness of heart. The glad sunshine and soft breezes of heaven come to her now only through the cold bars of the prison cell.

What unusual occasion has called together here a crowd so eager, so intent, so anxious? A man has died. And what is there strange or extraordinary in the announcement of death? Are we not like the "grass that in the morning springs up, and in the evening is cut down, dried up, and withered"? Death is the conquerer of all men. He is, in his operations, alike irrespective of age, of sex, of condition, of time, of circumstance, of occasion. Do we not see him stoop o'er the infant on its mother's lap, and cradle it in his cold embrace; seize upon the young man, strong, vigorous and proud, bind him hand and foot, and lead him away captive to the tomb; follow at the elbow of the aged tottering down the declivities of time?

It is appointed unto all men once to die, and no man can forfeit his proper share in the inheritance of the grave. Even now many a silver cord is being loosed and many a golden bowl is breaking. As I speak many pitchers are broken at the fountain, many wheels are broken at the cistern! "Men go to their long homes, and the mourners go about the streets." What is there, gentlemen, strange or extraordinary, in the fact, that a weak and feeble man should follow the ordinary course of nature, and

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"Fall, as the leaf falls when autumn is fading."

Soon after the death of Alexander C. Simpson there was a faint and indistinct whisper, that some foul hand had put a period to the life of the deceased. The public, ever ready for the marvelous, seized upon the theme. The whisper soon became a loud and stern enunciation. The press was violent, vindictive and unfair.

Upon bare rumor, ignorant of her accuser and without the opportunity of being heard, the unfortunate prisoner, in the first gloom of her widowhood and in the depth of her affliction, finds herself at once suspected and convicted before the public of that most unnatural of all crimes, the murder of him to whom before the sacred altar she had pledged her fidelity, her obedience and her love. She asks for justice here and appeals for vindication in this hour.

Before proceeding to this investigation permit me to say, it will become necessary for me to speak with candor and freedom. I shall defend this poor, wretched child and fight this mortal struggle for life with fidelity. I shall examine the proof carefully and with cautious scrutiny. I shall speak of the opinions of those whose opinions will be used by the prosecution for the destruction of the prisoner, fairly but fearlessly. I shall stand in "imminent, deadly breach" between the prisoner and the perils which beset her, let the assault come whenever,

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wherever, and from whatever quarter it may. I shall not occupy a position without authority to sustain me, and I protest I shall not ask you to heed any point I may advance, if I do not bring to support me competent and standard authority.

The defendant here is charged with murdering her husband by the administration of arsenic, and the first question arising is: did the deceased die from arsenic?

The first reason assigned by the medical witnesses for this belief, was that the symptoms of disease were such as arsenic would produce. Now it is very true that the symptoms, as testified to in the case of the deceased, Simpson, were such as an irritant poison like arsenic might produce, but you cannot reconcile it to your conscience to decide upon a probability. You would not, in the language of the solemn oath you have taken, "make a good deliverance between the State and the prisoner," if you arrived at a conclusion founded on any other basis than moral certainty.

I need not go for authority beyond the witnesses offered in this case for the prosecution. Dr. Robinson and Dr. Mallett admit that the symptoms in this case might all have arisen from natural causes. While upon this branch of the subject, it may not be amiss to remind you that there were many of the symptoms of arsenic that were wanting in this case, and surely, if the presence of certain symptoms are to be used as indicating arsenic, the absence of

symptoms common to that poison should be received strongly to establish that no such poison was there.

The morbid appearance of the body upon a *post mortem* examination is an index of arsenic to the mind of the medical witnesses. Dr. Mallett says: "Right lung was collapsed, the left adherent, heart natural, stomach inflamed down the small intestines, inflammation through the whole of external surface — opened the body and it contained about a quart of fluid, of a dark brown, and bloody; one or two points of erosion on the inside of the stomach, number of small white particles."

Let us see, first, as to the erosions. Dr. Togno, a very skillful physician, who was examined as a witness in the famous trial of Lucretia Chapman, charged with poisoning her husband, declared that such seeming erosions were found in the body of the deceased and in fact were common to all bodies, being nothing more than cadaverous phenomena — the settling of the blood by its specific gravity — the regular and gradual change which takes place after death.

Dr. Hopkinson, a witness in the same case, says a violent case of cholera morbus would present the same *post mortem* appearance as arsenic. It is considered, says this witness, that the appearances of the body, *as to these subjects, are fallacious*.

Again, gentlemen, very great stress has been laid by the prosecution here upon the white particles, or white powders, found on the coat of the stomach.

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Here of a surety, say they, is the veritable arsenic itself; arsenic is white, and here is something white; it must be arsenic; let the prisoner die. Why, gentlemen, I shall show you, from that authority which Dr. Robinson pronounced of the very highest standard, that very little consideration is to be paid to this discovery. I cite from Christison, the leading English chemist. He says:

“Care must be taken not hastily to consider as arsenic every white powder which may be found lining the inside of the coat of the stomach. Many other powders may obtain entrance from without. And, besides, small, white, shining pulverulent scales, not unlike finely-powdered arsenic but really composed of animal matter, are sometimes formed on the mucous coat of the stomach and intestines.”

The prosecution also relies upon certain *liquid tests* made by applications to the suspected fluid of the nitrate of silver and the sulphate of copper.

Dr. Mallett says: “The suspected substance was, after being boiled in distilled water, placed in a vial, and the ammoniacal nitrate of silver applied which produced a yellow color, the precipitate falling to the bottom, and afterwards changing to a brown.”

Mr. Beck, in his *Medical Jurisprudence*, declares this test to be uncertain and fallacious, and as at best “but an indication of arsenic.”

Mr. Kane, in his celebrated work on chemistry, says: “*The diluted solution of phosphoric acid* may

be, in some cases, precipitated by this test *exactly like* a solution of arsenic."

Dr. Christison says that this test is not to be depended on where animal or vegetable matter is present, for the precipitate is either not formed, or, if formed, is essentially altered in color.

With reference to the sulphate of copper test Mr. Beck, on page 359 of his work, says: "Again, a green color is produced by its action on different substances when arsenic is not present."

Mr. Turner, in his elaborate work on chemistry, pronounces this test "very fallacious, when applied to mixed fluid."

Mr. Kane, to whom I have referred, shows that "this test, when applied to other substances than arsenic, produces a like precipitate."

Let me read this from *Taylor on Poisons*:

"No one in the present day would think of employing these liquid tests in solution in which arsenic was mixed with organic matter. Almost all liquids used as articles of food are precipitated or colored by one or both of them, somewhat like a solution of arsenic, although none of this poison be present."

I submit to you with confidence that the life of the prisoner ought not to be jeopardized upon proofs so indefinite and inconclusive. Why, gentlemen, all the authorities declare that the reduction to the metallic substance is absolutely essential to the proof of arsenic. This is the sure and certain test. When the arsenic is reduced, so that the metallic ring is

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clearly formed so that the crystals are sublimated on the tube, and their peculiar *octahedral shape* is manifest to the naked eye, there is a definite and conclusive manifestation of the presence of poison; there is no further room for doubt, and *absolute certainty* is achieved. Other substances may produce the colors when applied to the liquid tests, may produce the "alliacious odor," may be reduced to such a resemblance of the arsenical ring as to be mistaken for it. But the shape of the crystals is so peculiar to arsenic, and, as Turner says, "so well marked, that a practiced eye may identify the hundredth part of a grain." Now, the supposition of the medical witnesses is that arsenic was in this substance in a very large quantity. When you remember that it requires four or five grains to destroy life, and that a three-hundredth part of a grain may be reduced, so that these crystals, and the peculiar shape of them, may be clearly distinguished, you will readily perceive that such reduction here was easy, if arsenic really was present.

I proceed to show you that such reduction was essential. For this position I refer the gentlemen on the other side to the opinion of Dr. Bache in Mrs. Chapman's trial, the opinion of Dr. Togno in the same case, to *Turner on Chemistry*, and last, but not least, in the estimation of the prosecution, to the testimony of Mr. Colton himself.

Gentlemen, do you understand how these tests

are made? Have you gazed in fancy upon that little vial, attempted to be made a vial of wrath against the prisoner, with the suspected substance, the application of these liquid tests, and the yellow color and the apple-green? And has it come to this? Is human life so cheap that it may be sacrificed upon a shade of color? Are you to be called upon to slay a fellow creature, and that creature a young but wretched and desolate woman, upon Dr. Mallett's idea of straw color, or Dr. Robinson's idea of apple-green, or Mr. Colton's notion of a turbid-brown?

But I proceed to show that the reduction test is fallacious, unless the crystals are sublimed till their octahedral shape is manifest and clear.

The first authority on this point is Mr. Beck. At page 353, he furnishes the objections. "The film of charcoal may be mistaken for arsenic." "Antimony may be reduced to a similar crust."

"Cinnabar, which is sulphuret of mercury, *exactly counterfeits* metallic arsenic in its appearance." — *American Journal of Medical Sciences*, Vol. 10, page 126.

Dr. Mitchell says, in the trial of Mina, page 6, "I now consider *that* (the crust of metallic arsenic) among the worst tests, since it is imitated exactly by another substance (sublimed sulphuret of mercury) to the eye."

This matter, gentlemen, deserves your consideration. It is in evidence that mercury in a blue pill

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was prescribed by Dr. Mallett, and twice administered on the day before the death of the deceased. Now, Turner says, on page 399, that if the prepared stomach contained mercury, and that mercury came in contact with hydrosulphate of ammonia, this very cinnabar, or sulphate of mercury, would be produced. You remember that the physicians applied what they called the ammoniacal sulphate of copper, and it is by no means an improbable deduction, that in this way the sulphuret of mercury was produced, and, according to the authority of Dr. Mitchell, from this substance was sublimed the metallic ring, so closely resembling the arsenical.

Dr. Mitchell, in the Chapman trial, said that in that very case, upon the application of the sulphureted hydrogen (the most delicate test and after a far more careful preparation of the suspected fluid than was made in this case), the precipitate was mixed with charcoal in a tube, and subjected to heat, "when the internal surface of the tube became covered with a black-looking matter, which an unpracticed eye might readily mistake for a metal." And here, gentlemen, were unpracticed eyes, and such a mistake was easy.

Again, antimony, if placed with the charcoal and heated, deposits the same crust. For the authority on this point I refer the prosecution further to *Turner's Chemistry*, and to the *United States Dispensatory*. In the latter, the color of the crust produced by antimony is described as a "brilliant steel-

gray" (precisely the color described here). Again, the glass itself may acquire a black metallic lustre from the reduction of the oxide of lead. And still there is another metal, cadmium, which forms a metallic sublimate like arsenic. See *Taylor on Poisons*.

All the authorities agree that the definite, certain proof of the existence of arsenic is the ring of *octahedral crystal*. Whenever arsenic exists in a substance, and especially when it exists to the extent testified to here, this ring can be produced, the crystals are marked and their shape can be easily ascertained; and when ascertained, the proof of the presence of arsenic is unquestionable. The effort to produce these crystals has in this case proved a failure, and the prosecution is left in the attitude of being unsuccessful in the only evidence that would have been certain and satisfactory. I ask, gentlemen, in behalf of the prisoner the benefit of this failure.

As to the "Reinsch's test," I only wish to cite one authority to show its fallacy. Dr. Guy, in his *Medical Jurisprudence*, urges against this test, that "The muriatic acid may contain arsenic," that "Antimony and bismuth when similarly treated deposit a similar metal," and that "Solutions of tin and lead and alkaline sulphurets tarnish the metal."

Gentlemen, Mr. Colton's testimony is greatly relied on by the prosecution. He was introduced with

some flourish of trumpets. He is the only witness who claims to be an expert in the detection of arsenic. Now I do not intend to treat this witness with disrespect; but, gentlemen, when I cast my eyes towards the prisoner's dock and behold that youthful creature, her life in imminent peril, clinging for support upon the bosom of that mother who alone, with her aged partner, of all in this wide world, during the prisoner's tribulations has clung to her, when I remember that as other friends have turned a cold eye upon this unfortunate and withdrawn their sympathy and support, as others have "passed by on the other side," this mother has entered into her gloomy cell and taken up her abode with the unhappy sufferer in her cheerless solitude, has appeared with her before this dignified tribunal to stand by her upon her solemn arraignment; when I behold her now present, enduring the shock of this public exposure, and realize that but for *her* this unhappy prisoner would be "hapless, helpless, friendless, and forlorn"; when I know that if her child perishes ignominiously, she will go down broken-hearted in sorrow to the grave, I feel that I defend the mother when I defend the child; and I should be derelict to my own sense of duty and should deserve a rebuke from his Honor, reproach from my brethren, and censure from the community, if I refrained from a full and free discussion of the sentiments, opinions, and *manner* of witnesses — if I failed to make *all* the defense of which my

client's cause is capable. And neither Mr. Colton nor any other man should hope to escape criticism that is fair.

I have said that Mr. Colton is the most important witness; if I assail him successfully, I overthrow the "head and front" of the testimony. The keystone falls out, and the whole arch gives way. You will remember that Mr. Colton lays great stress on the *odor of arsenic*. He says that smell is easily distinguished, and that the test by the odor is regarded as a "good test by all the authorities." Now, gentlemen, this is an important matter. Mr. Colton gives to this circumstance a pregnancy and point well calculated to make it tell fatally against the prisoner at the bar. If then it be established by the best, nay, by "*all the authorities*," that Mr. Colton is mistaken, that this is not a good test, but, on the contrary one of little value, I ask you, if it ought not to weaken the force of his authority, and destroy the effect of his evidence.

Let us see. I refer again to the report of the trial of Mrs. Chapman, p. 137. Jaeger says, "It is a very insufficient test." "Berzelius says, "It is always doubtful." Orfila says, "This character (the alliaceous odor) belongs to other substances." "It does often happen," says this author, "that we are deceived as to the true character of odors." Dr. Mitchell, in the same trial, says, "The arsenical odor is esteemed by high authority a very imperfect test of the presence of arsenic." Christison says,

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"This test should be altogether discarded. It does not always detect arsenic when present, and is not an infallible proof that it is present. Zinc, phosphorus, burning paper and animal matter, exhale a like odor."

I leave Mr. Colton, gentlemen, in the bold and prominent opposition he has assumed to the eminent authorities I quoted, with Mr. Christison, the most celebrated of all writers on this subject, at their head. If his self-esteem upon the subject of chemical knowledge affords him satisfaction in this attitude, and that satisfaction shall be without harm to the prisoner, I shall not attempt to rob him of its possession, or diminish its enjoyment.

Gentlemen, it was bad enough that the Government should have sought the prisoner's life upon the "shades of color," but it is altogether too much, to ask you to commit her to death because Dr. Mallett smelled a smell, Dr. Robinson smelled a smell, and Mr. Colton smelled a smell; especially when Mr. Colton, who relies most on the *olfactories*, confesses that his own nose is out of order, is in a dilapidated condition and can only be aroused to perception by a pungent odor.

Well, gentlemen, if it should be found that besides being contradicted by authority, Mr. Colton contradicts himself, what further reliance is to be had on his opinion? Will you not avail yourselves of the opportunity of taking this main spoke out of the wheel of the prosecution, that the prisoner

whom you have in charge may be delivered from being crushed?

On the first page of Mr. Colton's evidence, he tells you that "the only ground of *absolute certainty*, is the reduction of the metal." Yet, on the third page of the same lecture, while he informs you that he did not succeed in the reduction, yet he *looks on the other tests as conclusive*.

How can this be? I had always supposed that any reasoning to be conclusive should be certain or, in Mr. Colton's language, *absolutely certain*. Yet this witness, while regarding one test *alone as certain*, arrives at a *conclusion* upon other tests, and that too in the face of a failure in the application of this. If these opinions be not contradictory, they need another "remark" from Mr. Colton collateral to the paper to explain how they coincide.

I have now shown to you how contradictory are the authorities with regard to these tests — how uncertain, inconclusive and fallacious are the tests themselves, and I submit it as a rule of evidence, that you cannot arrive at a certain result through a train of uncertain circumstances. You cannot make with bent and broken links a perfect chain. I ask you whether opinions so contradictory and so liable to error should weigh in the balance against human life?

I submit, now, gentlemen, that the physicians have failed in a most important particular, upon which alone the prisoner is entitled to an acquittal.

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You have been often admonished and you are fully aware that the State must make out every part of the case — there must be no loop on which to hang a doubt. You have heard of the test by which the presence of arsenic was demonstrated. Now, the physicians failed to analyze these tests. There may have been arsenic in the very tests themselves. I shall undertake to show you that there was, and I ask you if it was not vitally important to the prosecution that its scientific witnesses should have analyzed these tests and extracted this arsenic before the application of them to the suspected fluid. They did not do so; but I expect to be able to establish that they put sufficient arsenic into the suspected fluid when they applied the tests, to produce all the results of color and odor and the reduction of the metal.

First. Has nitrate of silver any arsenic? This nitrate of silver contains nitric acid. (*United States Dispensatory*, 866.) Nitric acid contains sulphuric acid, or, rather, is manufactured out of it; and sulphuric acid contains arsenic. (*Taylor on Poisons*, 283; *Kane*, 383.) That it is important to analyze these tests, see *Medical Chirurgical Review*, page 472.

Second. The sulphate of copper. This is made from old scraps of copper and sulphuric acid. (*U. S. Dispensatory*, 275), both of which ingredients have arsenic (*Kane*, 391; *Med. Chi. Review*, 472).

Third. Sulphureted hydrogen is hydro-sulphuric acid, which contains arsenic.

Fourth. The copper plates and the muriatic acid, both in Reinsch's test, contain arsenic (*Guy's Med. Jurisprudence*, 593).

"In the employment of chemical tests," says *Taylor on Poisons*, "it is especially necessary to determine that they are *pure* before the analysis is commenced. Arsenic may be contained in the sulphuric or muriatic acid." And yet, gentlemen, here was no effort made to ascertain that the tests were *pure*; they were taken on trust out of the shops, and used without being analyzed. So, according to the best authorities, the experiments were incomplete, and the life of the prisoner ought not be hazarded.

Again, another fatal error by the physicians was placing the animal substance taken from the body in vessels which had not been examined, and whose purity had not been tested, to wit, in vials and iron pots. "Iron or metallic vessels ought never to be employed in an analysis of the viscera; the iron almost always contains traces of lead, copper, tin and arsenic" (Taylor, 118). Yet, in this case, the iron vessel was used. In all cases, insists Taylor, it is *proper* that the analyst *should test his tests*.

Now, gentlemen, let us see as to the disposition of the prepared portions of the stomach. According to the evidence of both physicians, "they were set aside" in that house of excitement and confusion. If it appears that there was arsenic in this vessel and it is not shown whether it was placed therein before

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or after it was set aside, an insurmountable barrier arises to the conviction of the prisoner.

The last matter on this part of the case is that there is no conclusive evidence that the substance purchased by the prisoner was arsenic. It was sold for arsenic. A substance like it has been sold to others for arsenic. The clerk at the drug store supposed it was arsenic; but you are not to take a *supposition*. If the bottle from which this was taken had been recognized and delivered to the chemist, and its contents analyzed and found to be arsenic, then there might be said to be proof of the circumstance; but in the absence of all this, there is nothing more than conjecture that arsenic was the substance purchased by the prisoner.

Can you rob the prisoner of hope, take away her life, cut short her existence, deprive her of her probation, and send her, "unanointed and unannealed," into the presence of the dread Jehovah, on evidence like this? The prepared substance laid carelessly aside, the vessels not purified, the tests not analyzed; where is the evidence by which to arrive at a verdict of guilty?

I wish now to present to your consideration another view of this case. In order to present this view, it will be necessary for me to examine into the poison known as antimony, out of which tartar emetic is manufactured. This poison produces the same symptoms as arsenic — inflammation of the stomach, purging, vomiting, and death. "The *post*

mortem examination would develop the same appearances as from arsenic (*U. S. Dispens.*, 797). There would be the same erosions and the white powders (*Guy's Med. Jur.*, 640). By some tests antimony may be made to precipitate the same colors as arsenic. For authority on this point, see *Kane*, 381, and *Turner*, 336. Antimony deposits the same crust as arsenic (*Turner*, 357) which is described in the *U. S. Dispensatory* as being of a brilliant steel-gray color. Besides, gentlemen, antimonial preparations, such as tartar emetic, contain of themselves arsenic. For authority on this point I read from *U. S. Dispensatory*, and from *Taylor on Poisons*. If this be so, and the supposition be that he died from tartar emetic, all the results would be produced from each test as were there produced.

I submit, gentlemen, that it is in evidence that the deceased purchased tartar emetic a short time before he died. You will remember that we asked this question of the young Smith, the clerk in the drug store of Mr. Hinsdale; he could not remember the sale. We then presented an account in the handwriting of Mr. Hinsdale to refresh the witness's memory. We alleged that that item of tartar emetic was upon the account. We could not ask the witness that question without introducing the account as evidence and the object of the prisoner's counsel was to avoid the introduction of evidence. But the prosecution had it in its power, if the fact was not so, to have produced the account; they could have ex-

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amined Mr. Hinsdale, and from their failure to do so, we have a right to ask you to infer that the deceased purchased the poison I have named a short period before he died.

In order to the view of the question I am about to present, it is necessary I should admit the disagreement between the deceased and the prisoner. Alexander C. Simpson became attached to and married the prisoner at the bar. For a time they lived together harmoniously, contentedly, happily. But soon, some foul Iago uttered suspicion of the virtue of his wife — whispered in the jealous husband's ear.

He was a man of keen and quick sensibilities and elevated pride, and the engendered suspicions weighed heavily upon his heart and mind. Having been cheerful, contented and happy, he became gloomy, desponding and dispirited. From having been kind, tender, affectionate, he became morose, severe, quarrelsome, till he could no longer conceal his emotions, but made an open rupture — wrote to her, upbraiding her infidelity — "I once thought you loved me, but I have reason to think that you like another better; you can be my wife no longer" — the ebullition of a broken spirit, and a heart that felt itself deserted and betrayed.

About this time he purchases a deadly poison — he is taken ill — his wife offers to him the services which a true and tender wife would be likely to offer, and he rejects them and thrusts her rudely aside.

He dies — his symptoms are all of the kind and in the degree which the poison he had purchased would be likely to produce. After his death his body is examined, and such appearances are discovered as the poison which he purchased would be likely to present — much more so than arsenic would, for here both lungs were affected, the “one adherent, the other collapsed”; and antimony “principally affects these organs.” (*Beck’s Medical Jurisprudence*, Page 419.)

The contents of the stomach are prepared and subjected to tests by medical men and chemists, and all the investigations exhibit just such results as the poison which the deceased had purchased would be likely to display. And after he is dead, no trace of that poison can be found upon his premises, and no account given of it.

Gentlemen, my association with the deceased has ever been of a kind character, and I mean to deal as tenderly with his memory as my duty will permit. But I ask you if here is not a strong chain of circumstances (assuming the evidence to be true) going to establish that he perished by his own act?

Gentlemen, I have endeavored to combat the accusation that the deceased died from arsenic. I have shown such proof does not exist from the symptoms and *post mortem* appearances, for these are common to natural causes; nor yet from the chemical analysis, for all the tests which were claimed to have been tried successfully are declared by the best

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authorities to be uncertain and fallacious; and it is not sound logic to *derive* infallibility out of a collection of fallacies, to arrive at inevitable truth from loose and scattered uncertainties. In addition to this it has been proved that the only experiment which would have been conclusive was tried without success.

Gentlemen, I pray you, do not cut loose from your moorings, and launch out from a safe haven into the broad wild ocean of surmise and conjecture. There you will have no compass to look to, and no star to guide you over the waste of waters. Beware, lest upon hidden shoals, or amid fatal breakers, you destroy a life which you can never restore, and forever shipwreck your own happiness and the peace and quiet of your own conscience.

May it please your Honor, I have now reached the second point in this inquiry, that is, whether if the deceased died from arsenic it is proved to have been administered by the hands of the prisoner. But, Sir, I feel exhausted, and although greatly desirous of doing so I am not able to enter upon this investigation. I am relieved by the consciousness that I have able and competent associates who will pursue this inquiry, and with your Honor's permission I will leave this part of the defense in their hands.

Gentlemen, the scenes in this solemn drama are drawing to a close, and soon the curtain will rise upon the last act, where you will sustain the promi-

ment characters. On the one hand is the rendition of the awful verdict of "Guilty" — and the prisoner is remanded to her gloomy and cheerless cell, then the pronouncement of the dread sentence of the law, and a definite period is affixed as the limit of her life — then the terrible suspense, the sad preparation, the appointed hour, her fair neck bared and circled by the hempen cord, her delicate frame enveloped in the felon's shroud, and the scene closes upon the gallows and the grave.

On the other hand is the bare pittance of life. You cannot give her peace. No more will the glad sun of prosperity shine upon her way, or the sweet flowers of pleasure spring up in her path. She stands shivering amidst the pitiless peltings of the storm of adversity. Her springtime and her summer have faded out, and all around, far as her eye can reach, is mantled with the white sheeting of misfortune's wintry snow. But, gentlemen, you can let her live. You can allow her for her allotted time to remain where "mercy is to be sought and pardon to be found."

The last rays of the setting sun of this fair and lovely day, the flitting clouds and the gathering shades of night are closely emblematic of the prisoner's dark and desolate condition. But these clouds will disperse — that sun will rise again to shine upon the evil and upon the good. May his coming rays shine upon her, a freed and liberated woman.

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Gentlemen, with my associate counsel I visited the prisoner on yesterday in the dungeon of which she was a tenant. At the hour when we visited her, the bells from your different churches were announcing that the people, in obedience to the proclamation of their chief magistrate, were assembling around their several altars to return devout thanksgiving to God for the favors vouchsafed them. We had gone to inform the prisoner of the absence of an important witness and to lay before her the propriety of continuing her case. When we had finished, with eyes streaming with tears and a face white as yonder wall, she replied: "I know not what to do — act as you think best; but I am as much in the hands of God to-day as I will ever be."

Gentlemen, to that country upon which she has put herself, and into the hands of that God in whom she professes to trust, I commit her cause.

Speech of Solicitor Ashe

MAY IT PLEASE YOUR HONOR, GENTLEMEN OF THE
JURY:

THE eloquent counsel who has just addressed you, has touchingly referred to the days of his boyhood, and his acquaintance with the prisoner at the bar. I, too, gentlemen, knew the prisoner in bygone days, and as I see her now, active memory

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calls up reminiscences of the past which painfully impress me with the vicissitudes of human life. When a lad at school, I was a boarder at her father's house. The prisoner was then a mere child, fresh from the hands of her Maker — of that tender age, when the follies and vices of the world had not as yet marred the work of nature — when cares had not yet begun to corrode — when the countenance still beamed with native felicity, and the heart rejoiced in unconscious innocence.

Since then, eighteen years have rolled by, and I see the prisoner at the bar for the first time again; but, alas, how changed! The days of her innocent childhood have fled. I see her a woman — clad in the habiliments of grief — wearing the weeds of widowhood — occupying that seat in this house assigned to the lowest and basest felons — the unenviable cynosure of all eyes, and charged with a crime, no less heinous than the murder of her husband by poison — a crime justly considered, of all others, the most horrid and detestable, because it is usually committed in secret, and so insidiously, that no forecast can prevent it, no manhood resist it. These circumstances are well calculated to render my situation unpleasant, but reason points out my path, and duty bids me pursue it.

Your first inquiry is, did Alexander C. Simpson die of arsenic? Dr. Mallett has informed you that he saw Simpson on the morning of the day on which he died — his countenance indicating great distress

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—complaining of an intense burning in the pit of his stomach, accompanied by nausea, vomiting and purging, with a weak and feeble pulse; that when the stomach was taken out and examined, the mucous membrane was found very much inflamed, as also the duodenum; that there were discoverable some two or three erosions on the inner coat of the stomach and a number of white particles deposited there, though not particularly on the erosions. These, the doctor tells you, are some of the symptoms and marks of arsenic upon the human system, though he candidly admits, and so does Dr. Robinson, who also visited the deceased in his last illness, that these symptoms and marks of themselves, independent of the experiments afterwards made, would not have brought their minds to the conclusion that Simpson died from the effects of arsenic taken into the stomach.

But numerous experiments were performed, a variety of chemical tests were applied. You will remember, the stomach was taken out the Saturday after Simpson's death, and placed in a clean vessel, and a part of the contents of the stomach put in an evaporating dish, and evaporated by heat until a residuum resembling cheese was obtained, which was boiled in distilled water until dissolved, and this solution was filtered through paper, for the purpose of freeing it from any organic matter that might have existed in the contents of the stomach. This precaution shows the skill and care with which the

experiments have been conducted. The fluid thus obtained was then subjected to the following tests:

First, to what is called the liquid tests. To a part of the suspected fluid was added ammonio nitrate of silver, and a rich yellow precipitate, gradually changing to a brown, was the result — the arsenite of silver, a compound of silver and arsenic. To another portion was added the ammonio sulphate of copper, and a rich green precipitate was formed — the arsenite of copper, a compound of arsenic and copper. The yellow precipitate was then put in a test tube and heated until it sublimed and settled in a cooler part of the tube in the form of crystals. Those crystals were then taken and boiled in distilled water until dissolved and the solution treated with the ammonio nitrate of silver as at first, and some yellow precipitate was obtained. A like experiment was made with the green precipitate, with a corresponding result.

Still another portion of this suspected fluid was placed in a test tube with strips of copper which were very soon furnished with a coating of steel color. Correlative experiments were then resorted to. A solution was made of what was known to be arsenic, and that solution was then subjected to the very same processes that I have just described, with the very same results.

An attempt was then made to apply the dry or reduction test, as it is called. The suspected fluid was put in a tube with charcoal, and highly heated,

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when a ring of metallic appearance was formed on the side of the tube, which resembled the ring described in the books as a metallic ring, but the experiment was at that time carried no further. Therefore, the physicians were requested to report the experiment during this term of court.

Accordingly, during this week, Dr. Robinson informs you he has applied the reduction test to the white particles obtained from the inner coat of the stomach of the deceased. These white particles were placed by him with a flux in a glass tube, and heated until it was sublimed into a cooler part of the tube, where it was condensed and formed a ring of a steel-gray color, and a few crystals. On examining this ring with a microscope it was found to possess that metallic lustre, peculiar to the metal of arsenic. That part of the tube containing this ring with the crystals was filed off and placed in a larger tube, and by application of heat other crystals were obtained. These crystals, you will remember, were dissolved in distilled water, and the solution subjected to the liquid tests, with the most satisfactory results. Drs. Robinson and Mallett give it as their decided opinion, from the symptoms exhibited by the deceased, from the marks of inflammation disclosed in the stomach and duodenum, and from the experiments made by them and by Dr. Colton, that there was arsenic in the stomach of Alexander C. Simpson when he died.

That these two gentlemen are men of high char-

acter and competent to give reliable opinions cannot be disputed. Their testimony then must be relied on. The law declares it — justice demands it — humanity requires it — the well-being of society enjoins it. Reject it! let it be understood that such testimony is not to be relied upon to warrant a conviction of the crime of murder, and you impair the securities of human life — you strengthen the arm of the wicked, and give encouragement to many a dark scheme of human villainy, now held in check by the fear of the hangman's whip.

In opposition to this testimony, you have heard from the able gentleman who has just addressed you, an earnest and ingenious argument affecting to prove that Simpson did not die of arsenic. You are asked, was it strange that a man of feeble health should sicken and die? Not at all. But it would be strange, that where a man, in either feeble or robust health, sickens and dies, and a quantity of arsenic is found in his stomach, you should undertake to say that he did not die of arsenic, when no other rational account of his mortal infirmity can be given.

But the defendant's counsel says that the experiments were inconclusive, that the physicians were not experts, and that Mr. Colton's testimony is so contradictory in itself, and so variant, in the *point of smell*, from the most eminent writers on the subject of chemistry, and his nose so dilapidated, that no reliance can be placed on his testimony. I

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do not consider that there is any irreconcilable discrepancy in Dr. Colton's testimony. It is true, he says, the only ground of absolute certainty is the reduction of the arsenic to the metallic state, and that all the other tests amount to a probability, more or less strong, as the tests are more or less distinct, and as correlative tests coincide with each other.

The reduction test was not applied by him which he admits would have rendered the evidence stronger, but the evidence derived from the experiments which he had made was conclusive — meaning that the tests were so distinct and the correlative tests so coincided with each other as to satisfy his mind of the presence of arsenic. And that the doctor should think the garlic odor was a very good test of the presence of arsenic is not so extravagant a position as to set aside his testimony. Many chemical writers speak of this peculiar odor as indicative of the presence of arsenic.

Dr. Christison is quoted to show that the white powder found in the stomach might have been animal matter, which sometimes resembles arsenic. The reply to this is, that there is no animal matter which, when subjected to the tests employed in the analysis of the white substance taken from the stomach of the deceased, would afford similar results.

It is urged, that the liquid tests cannot be relied on — that that of the ammonio nitrate of silver is fallacious, for that when mixed with phosphoric

acid, a yellow precipitate is obtained, exactly resembling that obtained by mixing it with a solution of arsenious acid. That is true; but when the solution of phosphoric acid is treated with the other liquid test, the ammonio sulphate of copper, the precipitate is altogether different from that which is thrown by applying the same test to a solution of arsenic.

Dr. Griffith, in one of his valuable notes to *Taylor's Medical Jurisprudence*, says: "Medical jurists appear to have overlooked the fact, that a solution of phosphoric acid is precipitated by this test (ammonio nitrate of silver) exactly like a solution of arsenic; but the answer to any objection on this ground is, that phosphoric acid either gives no precipitate, or one of a pale blue color, with the ammonio sulphate of copper," not of a green color, such as is obtained from the solution of arsenic.

It is further insisted that antimony, when subjected to heat in a tube, will produce a dark shining crust, very similar to that deposited by the arsenious acid; but they do not show, and I insist cannot show, any authority to the effect that antimony in solution, when treated with either the ammonio nitrate of silver or the ammonio sulphate of copper, will throw down the same precipitate which a solution of arsenic does; and the very same may be said of tartar emetic, which is a compound of antimony.

The physicians tell you, and the books bear them out, that there may be found substances which, when

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subjected to the various chemical tests employed for the detection of arsenic, will now and then give a result similar to that which arsenic will give, treated with the same test; as, for instance, onions, antimony, tartar emetic, cadmium, etc., but that there is no other one substance in the whole range of *materia medica* which, when subjected to all the chemical tests, will be attended with the same results as arsenic in every experiment. Hence, the importance of trying a variety of experiments with the suspected fluid, as was done in this instance; for when they succeed, as was the case here, in giving results precisely the same with what is known to be arsenic in each and every correlative experiment, they are not only strongly corroborative of each other, but cannot fail to satisfy every mind of the conclusive character of the proof.

Mr. McRae argues that the experiments with the liquid tests are not to be relied on, and that the only test which can give anything like certainty is the reduction test, which he alleges was not satisfactorily applied by Dr. Robinson, because the doctor cannot tell you that the crystals obtained by the sublimation and condensation of what he supposed was the metallic ring, were of an octahedral form. The doctor admits that he could not ascertain the form of these crystals with the microscope, but that the crystals when dissolved and subjected to the liquid tests were precipitated exactly as a solution of arsenic would have been. For Mr. McRae's position that no test

is to be trusted but that of reduction, Turner and Christison are cited; but to show you that such a position is not tenable, I beg leave to read a short passage from *Taylor's Medical Jurisprudence*:

“An important medico-legal question has arisen in relation to the tests for arsenic, namely, whether we can rely upon any tests for this poison independently of its reduction to the metallic state. Is it absolutely necessary, chemically speaking, to obtain the metal in order to say that arsenic is present in an unknown case? There is a *popular prejudice* in favor of this metallic reduction; and courts of law, as well as the public, are disposed to regard the obtaining the metal as the only conclusive proof of the presence of this poison. This, being purely a chemical question, must, of course, be answered on chemical principles, for it is chemical certainty that the law requires. If a white powder were presented for analysis, and it was found to possess distinctly the three first characters pointed out (p. 126) could any chemist entertain a reasonable doubt that the powder was white arsenic? I think not. The reductive process might corroborate, but I do not see how it could add greater certainty to the results thereby obtained; and in heating such a powder with flux the chemist knows that a metallic sublimate must of necessity be formed, for there is no white solid in the whole range of substance known to chemistry, if we except arsenious acid, which possesses the three characters mentioned. If we are so situated that we are obliged to rely upon one test only, then the process by reduction should be preferred; but even here so many mistakes have been made relative to the supposed metallic crust obtained from an unknown solid, that Dr. Turner and others say, that it should always be reconverted to arsenious acid, in oxidating it by heat,

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and that the white solid thus produced should be tested by liquid reagents."

This last experiment was made by Dr. Robinson, as I have before described to you, and Dr. Turner thinks it the most satisfactory; and you will notice that neither Taylor nor Turner, in the passage I have read, says anything of the form of the crystals.

Mr. McRae, in further support of this favorite position, informs you that he is supported by the opinion of Dr. Christison, one of the most prominent writers of toxicology. But listen to what Taylor says, who recites from the works of the distinguished doctor: "Dr. Christison justly considers that the reductive process is not more conclusive in the opinion of a chemist than the method by fluid tests; but he regards the former to be necessary rather as a concession to the unscientific minds of a criminal court and jury." (P. 247.)

So, I have now shown you, upon the authority of this gentleman's own witnesses, the learned and distinguished physicians, chemists and toxicologists, Christison and Turner, that the reduction test is not more conclusive than the liquid test; and if it is more conclusive, then I have shown you upon the authority of Drs. Robinson and Colton, that the chemical process of the reduction to the metal has been conducted to a most satisfactory result.

Next, it is insisted, if I understood Mr. McRae's argument, that the test used in this instance to detect arsenic will detect the minutest quantity, and that

perhaps the arsenic discovered by the experiments may have been small quantities in composition with some materials used for preparing the tests. It would be strange, if arsenic does enter into the composition of any of the chemical ingredients used for preparing the liquid tests, that the writers on chemistry and toxicology have not advised their readers of the fact, and guarded them against the delusive character of the chemical agents they are recommended to employ for the detection of the presence of arsenic. Yet we meet with no such admonition. This argument, though ingenious, is yet specious and far-fetched.

It is next asserted that the substance found in the stomach of Simpson was tartar emetic, and it is insisted that it is in proof, that Simpson purchased tartar emetic from a drug store, a few days before his death. What is the proof? Why, counsel say, forsooth, that they had a paper, which they alleged was a copy of the druggist's daybook, in which the tartar emetic was charged to Alexander C. Simpson; but that the State's counsel objected to its admissibility because they knew it would establish the fact; therefore, the jury must be satisfied of the fact. This is certainly a very extraordinary position, that the jury should receive that as *evidence*, which it is offered to be proved, but is rejected as inadmissible, merely because the opposite counsel object to its introduction. It would be an easy matter to prove anything you might please if such was the rule

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of evidence. The counsel in a cause would only have to allege that he could by a certain paper show a certain fact, offer it in evidence, however improper and inadmissible it might be, and then, because on proper grounds it is objected to, to insist that the fact exists as is alleged.

If you are convinced, gentlemen, that Alexander C. Simpson died of the effect of arsenic, the only other inquiry to be made is, did the prisoner administer the poison wilfully and of her malice aforethought? And it is natural to inquire why should this frail woman commit such a deed? Why should she take the life of him with whom she was connected by the most sacred ties that can bind together two human hearts? Why should she forget the amiability of her nature, and the gentler offices of her sex, and become the assassin and murderess? Surely, some great motive must be shown to have existed, operating upon her mind and impelling her conduct, like the behest of an irresistible destiny. If she had loved her husband — if she had lived on terms of harmony and affection with him — if she had entertained no guilty passion for another — if she had eschewed “evil communication,” her perpetration of this diabolical act would be so unnatural, so unaccountable, that it could only be presumed on the supposition of her insanity. Unfortunately for the prisoner, however, the State does show a motive; a motive altogether and entirely adequate to the commission of the deed — indif-

ference, dislike for her husband, and a consuming infatuated passion for another — for one whom she loved before she married Simpson — one whom she still continues to love — one whom she still, with all the passionate aspirations of her heart, desires to marry, and Simpson, the living Simpson, is the only barrier to the consummation of this most ardent wish. At first, she probably only trusted to herself to think of the death of her husband; then, perhaps, only to luxuriate her imagination in the contemplation of the felicitous consequences which might result to her fortunes from that event; and from *reflecting* on it, she soon began to *desire* it; and from *desiring* it, the step was but too easy to a resolution to *accomplish* it.

Am I not borne out in this by the evidence? About a month previous to the death of Simpson the prisoner unbosomed herself to the witness, Miss Register. Then the first act in the tragical drama began. The door, you will recollect, was locked, and a letter which she represented as one received from her husband, was produced and read, which speaks volumes of jealousy, distrust, and connubial infelicity. "I once thought you loved me, but now I have reason to believe you love another better. For the sake of our friends, you may remain in my house, but you can no longer be my wife. Prepare me a separate bed. I will furnish you with food, but you must find your own clothes."

This is evidence of a serious disagreement; and

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the words, "love another better," and the demand for a separate bed, but too plainly indicated what suspicions (not to say conviction) had taken possession of poor Simpson's mind, and her own admissions to the witness show that they were but too well founded. She admitted she did not love Simpson, and only married him to get a home — that she had always loved another — was engaged to him before she married Simpson and was induced by the persuasions of her friends to reject him.

Miss Register embraced the occasion to tender the prisoner some wholesome advice. She advised her to stop her intercourse with the young gentleman; intimated to her that Simpson might some day find him in the house, and in the heat of the moment take his life. "He knows better," was the bold and menacing reply of the prisoner — a reply which clearly involves a threat — a threat of revenge, which implies a full knowledge of her power and of his inability to resist. Had she then conceived the idea of taking the life of Simpson? Perhaps not yet.

The books of the sibyl, it is true, before that had been opened, but the mind of the prisoner had not yet been thoroughly corrupted by that diabolical sorceress, who by her infernal incantations, or rather wretched pretensions to divination, has wrought all this mischief and misery, has brought the unhappy Simpson to an untimely grave, and dragged down his unfortunate wife from the respectable station in

society which she had occupied, to disgrace, degradation and, possibly, an ignominious end. When we see a wretch like this, imposing her infernal sorceries upon either the folly of the wicked, or the credulity of the simple, one almost regrets that the ancient mode of trial for witchcraft has passed away with the days of barbarism.

Polly Rising had already foretold that the prisoner and her husband would live together five years, when he would die (three of which had already passed), mercifully allowing poor Simpson two more years to enjoy the blessings of his conjugal relations. That divination — that “turning of the cup” — was no doubt before the serious disagreement had taken place. Mrs. Rising was not *then* informed of the pressing necessity of cutting still shorter the thread of poor Simpson’s life. It is true, she had predicted that the prisoner after that sad event would realize the early aspirations of her heart, but she had not then been made fully to understand the importance of a speedy consummation.

Meanwhile, events progressed — the domestic breach widened — jealousy and distrust grew apace — the misunderstanding increased, until the prisoner leaves her house, and is absent some two days before she returned to her husband, her home, and her duty. A few days after this, she informed the witness, Miss Arey, that the misunderstanding between herself and husband had been reconciled.

Deceitful truce! Here the curtain drops for a

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space but the actors in this dark tragedy are not idle. The prisoner and Mrs. Rising saw each other frequently. In the meantime Mrs. Rising probably is informed as to the true state of the prisoner's feelings and wishes, and, after the most mature consideration and consultation of the whole matter, the Fates are induced to change their decree, and limit to a yet shorter period the brief space allotted to poor Simpson to live.

Two or three weeks elapsed after the last conversation with Miss Register, and the next thing seen of the prisoner she was in a drug store, in this place, purchasing arsenic, under the pretext of killing rats; and this on the Saturday before the Thursday on which Simpson died. It was not administered to rats. It was carried to her house.

On the Wednesday following, an unusual dessert in that family was prepared for dinner; a tumbler of syllabub was placed at the plate of Simpson, another at her own. The two boarders, Smith and Whitfield, both belong to the order of the Sons of Temperance, and of course were interdicted from eating it, as it contained wine. Simpson ate the syllabub provided for him, and asked if there was more. "No," the prisoner tells him, "but you can have mine." He ate that also. It is an article of food, you will observe, gentlemen, which the boarders *could not* eat, which she *would not* eat, and which Simpson *does eat*. They do not sicken, but Simpson sickens and dies. After dinner, on that

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day, we have no trace of Simpson until supper: whether he is sick previous to that time does not appear. The witness Smith tells you, that when he first commenced boarding with Mr. Simpson, as Simpson drank his coffee with less sugar than he, the prisoner told him she would always give him the first cup, which she had invariably done up to that night, and on this fatal night passed him the first cup, as usual, and whilst he was stirring it, and listening to a conversation between Simpson and Whitfield, his attention was attracted by the prisoner calling to him in an excited manner, and with an animated tone of voice, "Mr. Smith! Mr. Smith! That, I say, is Mr. Simpson's coffee!" The cup — the cup of death, as the State insists — was passed on to him, and he drank it; he ate nothing, refused another cup, and complained of being sick. The poison given in the syllabub was now perhaps just beginning to operate or possibly the dose administered in the coffee was telling its effects forthwith on his system.

On divers occasions, previous to this, in the two or three weeks preceding, the prisoner had entertained herself after tea, and before the cloth was removed, by practising the cabalistic lessons which she had learned from her friend, Mrs. Rising. She had acquired, under her amiable teaching, the "black art" of "turning the cup," and looking into futurity; and whenever she did so, it was to foretell the fortune of her husband, which was pretty generally

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disastrous enough; nearly always a prediction of sickness and death.

On this very Wednesday evening, very soon after he had taken to his lips that "poisoned chalice," she proceeded to tell his fortune. She turned the cup: "You are going to be sick, Mr. Simpson — very sick. Oh! I see a sick bed and some one lying on it — a coffin — dark clouds, and a muddy road. You know, lovey, I had our fortune told some time ago, and we were to live together five years, have two children who were to die, and a third who would live, and then you were to die, and I could marry again. Three have already passed."

You will observe she did not say one word about Mrs. Rising's last prediction that he would die in a week, which must have been then made some three or four days; she did not tell him of that, lest it might excite his suspicion when the poison should begin its ravages on his system; and yet, she prophesies herself, after she has got the poison safely lodged in his stomach, by way of gently intimating to him that if he should sicken and die very soon he need not be surprised at it, for she saw sickness and death in the cup. The Fates would have it so.

That night, at early bedtime, Simpson was taken very sick — the sickness increased — there was intense burning in the pit of his stomach — nausea, vomiting, and purging, and a slow feeble pulse. The next morning a physician was called in, but he could

give no relief; and on Thursday at dinner, while the poor man was suffering the most intense agony, and when at that very moment he has arsenic in his stomach which is preying like a consuming fire on his vitals, the prisoner inquires of Smith, what effect arsenic has on things.

Now you will naturally inquire, what circumstances would have suggested arsenic to her mind just at that juncture — whether the squeaking of some rat, or the groans and anguish of her dying husband? This circumstance I admit, as also that of the coffee and syllabub, and fortune-telling, each taken in the abstract, does seem too trivial to be seriously relied on when the stake is human life — yet they are links in the chain — threads in the cord, which, taken in connection with the fact of her disagreement with her husband — with that of her loving another better — with that of her desire to marry her first lover — with that of her calm, unmoved conversation with Miss Arey while her husband is yet a corpse, with that of her continually revolving in her mind the one all-engrossing idea of her husband's death — with that of her buying arsenic — with that of arsenic being found in the stomach of Simpson on the *post mortem* examination, and finally with the fact that he died of the effects of arsenic, become pregnant with the most vital importance; and, frivolous though they may seem, are important links in the great chain that binds the prisoner to this flagitious deed.

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The fortune-telling, the consulting the miserable old hag, the "turning the cup," no doubt, will be attempted to be explained away as the frivolous but innocent pastime of a silly, giddy woman. Her policy, no doubt, was to give it the pretense of an idle pastime. But it was manifestly a subject which had engaged both her head and heart — which had become the all-absorbing feeling of the one, the all-engrossing idea of the other; how to get rid of Simpson whom she did not love, and how to gratify her criminal passion for him whom she did love.

An idle pastime! Was that conversation with Miss Arey immediately after the death of Simpson an idle pastime? Was that an occasion to indulge in frivolity? No, gentlemen; in the presence of the dead we all feel an unaccountable solemnity. It is an occasion of all others, when "out of the fullness of the heart the mouth speaketh"; yet on this sad and solemn occasion, while the body of her husband is still warm with animation, while the disenthralled spirit still lingers over its deserted tenement, she renews her favorite theme, and with calm voice and tearless eye informs the witness, Miss Arey, that her fortune is coming to pass, that she had had her fortune told about a month ago by Mrs. Rising, and again at a later period by the same person, who predicted that Mr. Simpson would die in a week, and that she asked her if she would marry again, and the response was — "Yes, you will marry the man who first addressed you."

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The time, the place, the occasion, the solemn manner in which this communication was made, prove conclusively, that all that fortune-telling, prophesying, "turning the cup," and consultations with that woman of the "familiar spirit," were not with her mere idle amusements to while away the dull hours of a monotonous life, but serious, sober, earnest business in which her whole soul was engaged.

The fact, then, that the prisoner did not love her husband — that she loved another better — that she desired to marry another — that she had excited by her conduct her husband's jealousy — that she had had serious domestic disagreement with him — that she had seriously consulted a would-be prophetess in regard to his death — that she desired to get rid of him to make room for another — and, above all, that after his death her conduct and language should plainly manifest a feeling of gratification at the event, is, I submit, sufficient evidence of the *motive*.

That she prepared an article of food which no one would or could partake of but Simpson — that she sent that cup of coffee to Simpson on Wednesday evening, and was filled for a moment with excitement and alarm lest it should be drunk by another — in fine, that they occupied the same house, the same chamber, and ate at the same table, is proof sufficient that she had ample *opportunity to administer the poison*.

That she purchased an ounce of arsenic, enough

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to destroy a hundred men, and carried it home to her house, the house where Simpson sickened and died but a few days after, is proof sufficient, God knows, of the *means of death*.

That arsenic was found in the stomach of Simpson on the *post mortem* examination, and that the physicians who attended on him in his last illness, give it as their opinion that he died of the effects of arsenic taken into the stomach, is proof, taken in connection with the other circumstances I have mentioned, strong, irresistible and conclusive, that the prisoner at the bar committed this foul deed of murder, and the presumption of her guilt is the more strong and violent as no motive to take Simpson's life is ascribed to any other human being.

The counsel for the defense I believe did argue that there was as strong, nay stronger, evidence that Simpson took his own life than that it was taken by the prisoner. It is insisted that it was cream of tartar which was found in his stomach, and that he had intentionally taken a large dose to destroy himself. This is an ingenious hypothesis, but only an hypothesis unsupported by the facts. It cannot stand for a moment against the direct proof of the physicians, who tell you it was arsenic found in the stomach and not cream of tartar.

Ah! but it is said, Simpson, for some time before his death, was sad, dejected, dispirited, jealous, and that he took his own life to free himself from the cares and troubles which beset his path. Simpson

take his own life? He seek the cold embrace of death? See him as he lay on that bed of suffering! See him writhing with agony and burning up with inextinguishable heat! Hear his cries for aid! Hear him pleading like a child with those about him for succor! And when he is told there is no human relief for him, hear that passionate outbreak of his alarmed conscience: "Lord Jesus Christ, have mercy on me!"

This prosecution, gentlemen, as you here observe, has been based entirely on circumstantial evidence. I well know the popular prejudices existing against that species of proof, and I have no doubt a strong appeal will be made to that prejudice on this occasion — that extreme cases of unfortunate convictions on circumstantial evidence will be read in your hearing, to startle your imaginations and alarm your consciences.

The State, gentlemen, against such *ad captandum* arguments trusts in your good sense. We are all human beings under human institutions, and to attain the truth of a fact within human knowledge, we must depend on human testimony. If we reject that kind of human evidence called circumstantial, which, after all, is based upon the testimony of witnesses, because innocent persons have been convicted on such testimony, for a like reason we ought to reject direct proof, because innocent persons have been improperly convicted upon direct testimony of corrupt and perjured witnesses. Fallible creatures

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as we are, we must rely upon such testimony, fallible as it is, else three-fourths of the felons in the land would go "unwhipped of justice."

I now commit, so far as I am concerned, gentlemen, the cause of the State into your hands, feeling fully assured that you will do even-handed justice between the State and the prisoner whom you have in charge. Yonder figure on the wall is a fit and beautiful emblem of that Justice which should be administered in this hall today. Calm, sedate, benevolent, yet firm, high above her head with one hand she holds the impartial balance; with the other the sword. That balance you now hold; that sword His Honor holds, wherewith to strike or spare, as you may by your verdict direct.

Speech of Mr. Winslow

MAY IT PLEASE YOUR HONOR, GENTLEMEN OF THE JURY:

IN the performance of no duty have I ever felt more oppressed with responsibility than upon this solemn occasion. And no more painful duty could have been imposed upon you by your country.

A wife is here arraigned to answer to the accusation of the murder of her husband, charged with the cold destitution of all the finer feelings of our nature — a woman's nature; with the hellish spirit which would prompt her, under the guise of love, to extend the poisoned chalice to him to whom all her affec-

tions were pledged, all of her obedience due, and upon whom all her hopes of human happiness ought to have been centered. It is a crime so monstrous and revolting that one is tempted to pronounce its impossibility, a crime so incredible that, like parricide among the Athenians, our language lacks a technical word to express it.

Gentlemen, such is the mysterious action of the human heart, that the bare *accusation* of crime frequently engenders credence in the breast of man.

“On eagle wings immortal scandal flies.”

Individuals are never wanting to pander to the curiosity and morbid feelings of the public; and the more heinous the accusation, the more tenaciously does belief fix and fasten and entwine itself about the fibres of the human heart.

This infirmity and proclivity of our nature was known to our Saxon forefathers; and, accordingly, the law does not trust the inconstant masses, easily moved by prejudice and swayed by passion, to pass upon the issues of life. These momentous trusts she commits to a portion of the people, a small body selected by lot. Untechnical minds, she associates with them a legal mind to guide and direct their investigation; she binds them by a solemn obligation truly to try and true deliverance make.

Into this responsible trust you have been sworn. You are men, holding in your hands for a brief season the awful attributes of omnipotence, *power*

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over life; and you sit there to judge a fellow being like frail with yourselves; a being of the gentler sex, the fresh flowers of whose young life are blasted, whatever may be the destiny your verdict shall mark out for her.

I pray you to approach this case, so important in its results, with calmness, indeed, but not with stoical indifference. Approach it with minds soaring far above all bias, and rising superior to all prejudice; yet with hearts quick with the sympathies of our nature. The law forbids not the indulgence of such feelings.

“Ye are not wood, ye are not stones, but men!”

I am instructed by my unhappy client, in the presence of God and this assembly, to declare her entire innocence of the horrible crime imputed to her; to assert the utter incapability of her nature to have planned or perpetrated it, and her firm reliance upon your judgment for her safety and vindication.

Thoughtless, volatile and indiscreet, she may have committed errors of youth and of temperament, which the cold and selfish purist and the canting hypocrite may frown upon; but which the philanthropist may view with regret, and excuse; and the Christian contemplate with sorrow, and pardon.

I shall come to the discussion of two great propositions submitted with the rules of law for our guidance, and I shall endeavor to show that they will be violated by a conviction of the prisoner; that

there are hypotheses to account for the death of the deceased, as probable as that of his death by poison administered by the hand of the prisoner; and that, in seeking to assign a motive for the perpetration of the crime, you are asked by the prosecution to draw conclusions from presumptions, when, if the motive existed, direct proof must have been attainable.

I know the respectable gentlemen, Drs. Robinson and Mallett. In the purity of their motives and the integrity of their characters no one has more implicit confidence than I have. I do not undervalue their scientific attainments, but they are not professed chemists, and will hardly aspire to be designated as experts in that experimental science. Dr. Mallett was the attending physician. The admirable manner in which he acquitted himself on the witness stand elicits applause. The clearness and perspicuity of his testimony gives promise of future usefulness; and the reputation here acquired will undoubtedly lead him to the honors, as I trust it will to the profits, of his profession.

Dr. Colton bases his conclusions upon the results of the liquid tests, and the production of the precipitate of colors, known as canary-yellow, brick-red, blackish-blue and apple-green. Very delicate shades! and the life of my client is asked at your hands, because Dr. Colton is enabled to testify to such minute shades of difference in color as those aforesaid, canary-yellow, brick-red, blackish-blue and apple-green.

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But to this is to be added the garlic odor or alliaceous smell, the result of the third experiment which Dr. Colton observed, notwithstanding his olfactory nerves have lost so much of their action that unless an odor be pungent he cannot perceive it. In a capital case, jurors should no more convict upon a peculiar smell, than upon a shade of color.

I do not mean to weary you, gentlemen, by a minute and critical examination of the liquid tests as conducted and testified to; that has been ably done by my associate and his argument remains unanswered. I will content myself with a reference to one or more additional authorities.

Dr. MacNeven, in the *Medical Journal*, says, "The alliaceous smell alone cannot be relied on, for hydrogen gas burns with a faint smell of arsenic; phosphorus and zinc under the same circumstances burn with a similar odor." Christison says, "Animal matter, and even paper, will imitate it."

The same uncertainty hangs about the liquid tests used. In the first experiment carbonate of potassa was dissolved in the suspected fluid, and to that solution was added the ammoniacal sulphate of copper, and the result was a green precipitate; but the authorities say that the same agents with some animal and vegetable substance give a green color, similar to Scheele's green, although no arsenic be present, and that a strong infusion of onions will produce the same results.

The nitrate of silver test is liable to many am-

biguities. Phosphoric acid occasions a precipitate of the same color; and Brande says that in a case of importance no reliance can be placed upon it. According to authority the test by sulphureted hydrogen is also ambiguous, from similarity in color with other metallic precipitates, and from impurity of the gas.

Dr. Robinson testifies that, judging from the symptoms only, as detailed by the attending physician, he could not say there was arsenic present; and it is laid down in all the books that reliance cannot be placed upon the symptoms without proof of the exhibition of the poison.

But, gentlemen, I submit that there is evidence that the death was not produced by arsenic. The charge is, that the arsenic was administered in syllabub, at dinner. The deceased exhibited no nausea until in the evening after tea. There was no proof that he was sick in the afternoon: had he been sick, proof would have been offered. That which the prosecution have not done, rely upon it, they could not do. On the other hand there is evidence that he was well. The witness Smith saw him walking in the afternoon, and Dr. Mallett cannot distinctly say whether it was upon that or the preceding evening he met him walking with the prisoner. He did not complain to anyone that he had been sick, or vomiting, in the afternoon. According to all the authorities, nausea and vomiting follow the exhibition of this deadly poison within the hour. This is the

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general rule; there are exceptions, but the excepted cases are those in which sleep has supervened. But it was said poison was administered at tea time in the coffee. Dr. Robinson gives it as his opinion, that there was a considerable portion of arsenic in the stomach, certainly three grains. This is a fatal quantity, and must have produced an illness much more serious than that under which the unfortunate man labored that night. At the morning visit, the attending physicians and the witness Smith depose, that they did not consider him very sick. Had he taken that evening that quantity of arsenic, I submit the symptoms would have been more formidable, and the consequent illness, instead of being light, and not such as to excite the fears of his medical adviser, would have been unto death. I submit that, reviewing the whole matter, *the proof of the corpus delicti is equivocal, and not free from doubt.*

At the first analysis, those respectable physicians, Drs. Gilliam and McRae, aided: Mr. Samuel J. Hinsdale, a practical chemist, of known reputation in his line, assisted in the second series of experiments. All these gentlemen are under subpoena, have been in attendance, and have not been produced. It is a fair inference that they would have been examined if their testimony would have corroborated that of their fellows. You have a right to presume that *direct testimony has been withheld*; and this presumption adds to the doubts. To clear up any doubts upon the presence of arsenic in the suspected

fluid (the contents of the stomach) my learned friends upon the other side might have caused the reduction test to have been carried on before you. They have not done so, and the prisoner is entitled to all the presumptions naturally flowing from the omission.

But, gentlemen, conceding that there was arsenic in the stomach, a more important inquiry remains. The prosecution must show that it came there by the criminal agency of another. I submit that there are facts and circumstances from which presumptions may be drawn to favor the idea that arsenic was present by other means than a criminal agency.

Arsenic is about the most deadly of the irritant poisons. Two grains, according to Hahnemann, produce death. A grain, dissolved in wine, was known to have affected all who partook of it with severe effects, although taken after dinner. According to Lachese, one-eighth of a grain, taken by a healthy adult, may prove injurious, doses of a quarter to half a grain may induce symptoms of poisoning, and one to two grains may cause death. Disorders of the stomach may be produced by small doses, and often prove of long continuance. A lady who took arsenic had not recovered of the effects, says Dr. Elliotson, after ten years.

Applied externally to a wound, or an ulcer, or even to the skin, it often proves fatal, and exhibits frequently the same symptoms, and produces the same results, as if taken internally. In this way

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various quack preparations and certain pastes, which have arsenic for their bases, may prove dangerous. Nay, the inhaling the vapors produces very hurtful consequences. I wonder if my learned friends suffered no inconvenience during their experiments at sublimation. So fatal are the effects of the vapors of arsenic that in Bohemia, where the cobalt is roasted, formerly none but convicts under sentence of death were put to work at the mines; and in the liturgy of all the churches, a prayer was always put up — *God save the miners from arsenic and spirits*. Among the effects of death by arsenic in this manner are inflammations of the inner coat of the stomach, and erosions, and perforations.

Now, gentlemen, it is in proof before you that the prisoner was in weak health. He may have taken some internal remedy, such as Fowler's Solution, which is known to contain arsenic. He had been afflicted with a scrofulous disorder: there were scrofulous eruptions on his head and body during the summer. The State has not attempted to prove his recovery from that disease. Intending to take sulphur for the cutaneous eruptions, he may have taken orpiment, a pigment used for painting chariots, now measurably superseded by chrome yellow. Orpiment and the flowers of sulphur resemble each other, and Dr. Colton has testified to a fatal mistake between them, which came under his knowledge. He may have resorted, as an external remedy, to some of those quack preparations known to contain ar-

senic. The application of those substances to some external sore, would have produced the unfortunate result of his death. Iodide of arsenic is a remedy frequently exhibited in scrofulous complaints. He may have resorted to that medicine. There was wine in the syllabub he ate at dinner. Wine sometimes contains arsenious acid; Orfila gives minute directions for its detection.

Arsenic may have been present in the remedies prescribed by the physicians during the indisposition of the deceased. The adulteration of drugs is carried to a fearful extent, and physicians tell you they know not what they are giving when they prescribe.

The very vessels used to hold the contents of the stomach, the test tubes, nay, the tests themselves, may have contained arsenic. In certain kinds of glass, arsenic is used to make the glass clear and vitreous; when in excess, it produces that milky appearance which we see in some of the ornamental glass-work. If an alkali be in excess, the arsenic becomes soluble by the addition of an acid.

Dr. Mallett says the contents of the stomach were first placed in a clean vessel. Aside from this there is no evidence whatever to show that the other vessels were cleansed. This, too, was upon the occasion of the first analysis. It has not been proved what kind or quality of vessels were used at the experiment conducted last week, whether clean or unclean, cleansed or uncleansed. You will be asked to presume everything by the prosecution.

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Gentlemen, the prosecution, fully aware that to establish so horrible a crime as this imputed to the prisoner, credulity itself would demand a plausible motive, seek to establish one by persuading you that the prisoner was a wanton, and unfaithful to the marriage vow.

We shall presently see that no satisfactory proof thereof has been adduced. Taking, however, the declaration of the State to be true, it furnished also a motive, sufficiently strong, to favor the hypothesis which my associate has discussed, and to which I shall content myself with alluding. I mean the death of the husband by suicide. I repeat, if these facts can be assigned as a motive for this crime, if the wife so loathed the husband, as to be induced to resort to violent means of separation, if she were so wanton in her desires and illicit loves as to have persuaded herself to march up to their indulgence by trampling under foot every obligation, human and divine, and by the infraction of that solemn commandment of her God, "*Thou shalt do no murder*"; the existence of such feelings and impulses in her mind, her conduct, at least to some extent, might have operated in prompting the unhappy husband to commit suicide. And this consideration will derive strength, or exhibit weakness, according as the circumstances implicating the prisoner, presently to be discussed, are strong or weak.

But, gentlemen, suppose it be conceded, for the sake of argument, that the deceased died of arsenic,

and that the arsenic was criminally administered to him, we are brought to the second great proposition: was it administered by the prisoner?

And here there is no field for suspicion or conjecture. The issue is one of life. Shall this weeping girl receive judgment to die? Proof! — give us proof! must be your stern demand of the prosecution.

I take it for granted that the State has brought forward every fact that can implicate the prisoner. Active men have stood behind the Solicitor's chair to aid this prosecution. The purlieus of the town have been ransacked, the sinks of wretchedness, and the abodes of want.

Trifling circumstances have been gathered together, and my learned friend will eloquently comment upon them, roll them into one dark mass, and tell you that the charge has been proved to a mathematical demonstration — that will be the word.

I admit that a number of independent circumstances, all pointing to the same conclusion, strengthens the probability of such conclusion. But when the circumstances flow naturally the one from the other, such probability is, if not weakened, surely not strengthened. Jurors are not called upon to strain at every insignificant circumstance, and to endeavor to bend it in a direction to support a particular hypothesis.

When a crime like this is accused against any one, we instinctively inquire into the *means* and the *mo-*

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tive. The means, the State tells you, has been proved; the prisoner purchased arsenic at Hinsdale's on the 3rd of November. I allude to this matter now, as illustrating what I have said of the nature and force of circumstantial testimony. Well, it is admitted. She did purchase arsenic; but she purchased it in open day. James Butler was with her in the shop at the time of the purchase. If she had deliberately formed the purpose of making away with her husband by such means, think you that she would not have furthered her guilty intention without danger of exposure? If the woman Rising were vile enough to have counselled her to such an act, she would have been artful enough to have procured for her the poison, without a committal of either. Such conduct is not consistent with guilt; her course was frank and open and there was no whispered order.

But it is said, that on the day upon which the deceased died, she asked at dinner of the witness Smith the effects of arsenic upon rats; and this circumstance, in connection with the purchase, is referred to as evidence of guilt. I may be permitted to say, that, before the inquest, Whitfield, the other individual who was of the dinner party, stated such conversation to have occurred the week previous. He has not been produced before you. Mr. Smith may be in error, as to the time of this conversation. Certainly, if it occurred the week before, very little stress can be put upon it. Taking it as having

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happened upon both occasions, and giving the State the full benefit of that admission, there is nothing in it. Take it in connection with the purchase, and what is more natural? She had purchased arsenic to poison rats; her aunt had cautioned her against the use of it; she said she had put it in the sand; was it not natural to speak of it, and inquire more particularly as to the effects? When told by Mr. Smith that the red arsenic made them run to the fire and the white arsenic made them take to the water, is it at all unnatural that, struck with such curious and singular effects, she would speak of it more than once? Had she designed the death of her husband, she would not have alluded to the subject. It is the part of the guilty to seek concealment. So far from this circumstance proving guilt, it vouches for innocence.

It will be said that at the time of the last conversation her husband was stretched upon a bed of sickness, and such light conversation indicated a callous heart, closed to the sympathies of our nature. Grant the conclusion! Will it warrant you to find her guilty of a capital charge? The accusation against her is not a want of feeling, but a criminal purpose; the one may well exist without the other. At the time also you will remember, gentlemen, the symptoms had not put on a fatal appearance; there was nothing, in the judgment of the physician and the witness Smith, indicating dissolution.

We come now to consider the circumstances at-

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tending the fatal illness of the deceased. When he was taken sick, I pray you to point out any act of hers indicating guilt. She does not disguise his illness. She invites to his chamber the inmates of his house; access is *invited*, not *denied*. She sends promptly for a physician, she watches over him, ushers his friends into his room, exhibits emotion when he speaks of death, prays him not to speak thus, and in no particular is wanting in duty or apparent affection.

When he grows ill, on the evening of that fatal day, for whom does she send for succor and sympathy? For one unfriendly to her. Are all these facts consistent with a guilty design? Would it have been the part of a murderess to have invited the friends of the deceased, and her own enemies, around the sick bed of her victim, to spy upon her conduct and scan her every act, if not with malice, perhaps without extenuation? Would she have so promptly called a physician, whose suspicions the symptoms might arouse, and whose jealous eye might detect the causes of a death she was so much concerned to conceal? But it will be said, on the other hand, this apparent frankness was but assumed to cover her artifice from detection. Gentlemen, it passes belief that one so young, so inexperienced, should so suddenly have become depraved! Guilt never overthrows at once the fabric of virtue; it makes its inroads by slow and gradual approaches and undermines rather than storms.

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But her deportment, when the *post mortem* examination was proposed to her, is altogether inconsistent with the idea of a plan so settled. Would she not then have awakened to a sense of her danger, and resorted to all those arts, which woman so well can wield, to prevent the dissection? When it is proposed to her, does she hesitate? "She exhibited," says Dr. Mallett, "no more nor less repugnance than I should have expected from any wife." She replied, "If Dr. Robinson and you think it important, I will interpose no objection."

You are told she married him for a home, and she is represented as doing a deed, the effect of which was to deprive herself of that home she sought to acquire. She purchased arsenic, declares it was purchased to destroy vermin, is advised against the use of it, declares she has thrown it away, speaks of it openly, her husband is taken sick, she calls in a physician, invites his friends around him, ministers to his wants, weeps when he grows ill and it is evident that the angel of death is hovering over his couch, calls to her aid one who is unfriendly with her and therefore prepared to judge her with bias, conceals nothing, and when dissection is proposed to her, yields to the wishes of her medical adviser with commendable propriety, betrays no emotion of guilt, nor of contrition, and all this, perfectly and naturally consistent with unsuspecting innocence, furnishes the prosecution with argument to prove her guilty!

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But the prosecution, aware of the bareness of the picture, seek to fill up its outlines, and bring forward other circumstances to give it shade and coloring.

It is said that there was a circumstance in the conduct of the prisoner during the fatal sickness pregnant with suspicion, and this was brought forward with such ostentatious parade, that before it was developed, we trembled for the result. But what was it, after all? A wife places her hand upon the brow of a sick husband; the sick man is suffering from that most painful of all symptoms, nausea—that seasickness, from whence is derived the technical name; and he exhibits petulance and irritability, and you are called upon to note it as a circumstance indicative of his suspicions of her guilt. She makes a light and thoughtless reply, which, construed in its worst aspect, exhibits want of sensibility; and you are called upon to convict her of a horrible murder.

As little stress can be laid upon the matters of the syllabub and coffee. The State points to those occasions as the opportunities she enjoyed to perpetrate the crime. I have shown that arsenic could not have been administered in the syllabub, for that sickness did not supervene during the afternoon; and the affair of the coffee is too trivial and insignificant to dwell upon. Simpson and the witness Smith drank their coffee of different degrees of sweetness and of strength, and usually there were two pots of

coffee prepared; that evening there was but one. The cup designed for the deceased was handed to Smith: she called to him in an animated tone, "Mr. Smith, I say that is Mr. Simpson's cup"; and the witness adds that he supposed she had remarked it to him before, but in a tone so low that he probably had not heard her. Such mistakes had previously happened.

The only remaining circumstance of suspicion, anterior to the death of the deceased, is the matter of the fortune telling, and about this, what I have said as to the other facts applies with equal strength. Such conduct is wholly inconsistent with the guilt which the State seeks to fasten upon her. It would be volunteering, in advance, testimony against herself. To one conversant with human nature, who knows how large a portion of the world is yet swayed by superstition, who feels the irresistible propensity of most minds to pry into the mysteries and lift the veil of futurity, who is aware how many confide in the idle predictions of artful persons, it will not appear strange that a silly girl should resort to a sillier old woman, to have her fortune told; and when told, it would be strange indeed if she spoke not of it. But strange, passing strange, indeed, would it be, if a jury of the country, upon such a circumstance, should pronounce her guilty of murder.

Your attention has been called to her conduct after the death, as detailed by Miss Arey. They repaired from the sick man's room to a chamber.

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She then told Miss Arey it had been predicted to her that her husband would die, and it had come to pass. "There was not," said Miss Arey, "a tear in her eye"; and this the prosecution says is conclusive of her guilt. Gentlemen, if the prosecution is to be believed, this unhappy girl is the most artful and hardened of culprits. Every circumstance of her conduct throughout this whole affair admits of one of two constructions: her entire innocence; or an artfulness of nature, and a guilt so deadly, as to be almost incredible. It would not have been a difficult task to have counterfeited sorrow; tears, feigned tears, might have flowed at her bidding. It is inconsistent with the hypothesis of guilt for one alleged to have been so artful, to have pursued a line of conduct as would inevitably arouse suspicion. Miss Arey may have mistaken what was said about the fortune telling. I am instructed to say that she did. But if this be not so, she herself had told her husband of the prediction. When the seeming prediction was fulfilled, was it not natural that her mind should recur to it?

There was not a tear in her eye! Ah! it is not alone

"the fruitful river in the eye"

that betokens sorrow.

"There is sometime that within which passeth show."

But, gentlemen, allow me to ask you, what long ago you must have asked yourselves, what motive

existed to prompt the prisoner to commit this crime? The State's charge that she was unfaithful rests alone upon the testimony of Miss Register, who was in the prisoner's employ. If any proof were wanting of the thoughtless, childish and unsuspecting nature of the prisoner, so little consonant with art and guilt, it is to be found in the testimony of this witness. There had been a misunderstanding between the wife and husband. What marriage is exempt from like difficulties? At best, we are but frail creatures, and light are the causes which sometimes move dissensions between hearts that love.

In a moment of despondency, the deceased fancies that his wife loves him not, and he pens the letter which she, in an unguarded moment, reads to the witness, and which is now produced to take away the life of one he loved. She counsels with Miss Register as to her course, and at last resorts to that line of conduct to which an affectionate wife will always resort — she disarms his anger with a smile and a kiss. Certainly the disclosure by Miss Register of a confidential communication proves the imprudence of that communication beyond question. But this is not a question of ethics, or of etiquette; it is an issue of life or death that you are trying. In ordinary matters you would be bound to place the most charitable construction upon what was said; shall you do less, in a matter involving the most momentous of consequences to the prisoner? She meant nothing more than that her husband's jealousy

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was unreasonably and foolishly excited. She had loved another before her marriage: prudential considerations had controlled her choice. Hers was not an isolated instance. Marriages are as often dictated by prudential considerations as by the feelings and sentiments of the heart; and, perhaps, as frequently prove happy. These considerations, it is true, ought to have operated upon the prisoner, to have made her circumspect in her conduct, and chary of her confidence. But let us not be too exacting in our requirements. We can scarcely expect to find a young and giddy girl suddenly transformed by marriage into a grave and sedate matron.

But, gentlemen, the charge the State prefers against her, that she is a wanton, rests wholly upon suspicion without proof, and conjecture without corroboration. There is direct testimony to negative it, and negative testimony to disprove it. The letter of the husband brings no such charge against her. He complains merely that her affections are alienated. He bids her remain under the shelter of his dwelling, and denies not to her a place at his hearth. Think you, if she had been the wretched thing the State would have you believe, a creature for others' uses, he would have suffered her to remain? Rather would he have expelled the polluted one, and made her seek protection in the arms of her guilty paramour.

Gentlemen, all the witnesses examined have been called by the Government. We have briefly re-

viewed their testimony. I submit that upon it you cannot feel convinced of the guilt of the prisoner beyond a reasonable doubt. It is almost impossible, however, that you can look simply upon the evidence detailed. The incidents connected with this unfortunate affair have been much discussed. Rumor, with her thousand tongues, has spread far and wide garbled statements. Facts have been distorted. Invention racked itself to color with fuller hues and deeper dyes, circumstances in themselves trivial and insignificant. A stranger would be astonished to find in the weeping girl before you, the unnatural monster busy fame has painted. More or less you may have partaken of the general prejudice. And still, in the face of all this, I dare to say, you cannot be convinced of her guilt beyond a reasonable doubt. She has produced no witnesses. In the nature of things she could have none. The State relies upon circumstantial evidence to prove her guilt. She appeals to the same circumstances for her innocence. Such hues of health could never tint a guilty cheek; the weight of such a horrible crime, were she guilty, would weigh her down.

But though he has no living witness to produce, one for her speaks from the dead. Her strongest witness is this dead Alexander C. Simpson. Fortunately for her, during his brief illness his intellect remained unclouded. He was neither comatose nor delirious. The mind in all its vigor occupied its citadel to the last. Numbers of persons saw him

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during his sickness. The medical gentleman in whom he confided was with him upon several occasions. Those to whom he intrusted his business affairs, were with him repeatedly. One, upon whom in his mortal agony he called to pray with him and for him, was there. If he had had any communication to make, ample opportunity was afforded.

Gentlemen, when one becomes sick the first and most natural inquiry uppermost in his mind is, not what can relieve him, but what ails him? Simpson, says the prosecution, was suddenly stricken with illness; he grew worse in spite of remedies; his symptoms were those which follow the exhibition of a deadly poison; his wife had proved unfaithful, and had dishonored him; his affection for her had become alienated; it was known to him that she had purchased this fatal arsenic; she had but a few days since predicted his death; had spoken before him of the effects of the poison, under circumstances of a dark suspicion; procured him to eat of syllabub, and drink of coffee; nay, had given him the former at dinner, and the latter at tea; and yet he, the victim, had never suspected a fact, which the State tells you was so plain that he who runs might read. He, of all persons, in the view the State presents the case, should have been the first to have suspected foul play, and yet the idea had never crossed his mind, or if it had, he had not given it utterance.

Gentlemen, this whole case rests upon circum-

stantial testimony. The proposition that convictions ought not to take place upon such evidence is not tenable; it is equally false to say that it is more to be relied upon than direct proof. In some respects it is much less strong. Facts and circumstances come to you from the mouths of witnesses; the opportunity for wilful perjury is as great, and the chances of deception, mistake and misapprehension greater. How many cases are to be found in the books, where innocence has suffered the penalty of guilt, from force of circumstances apparently irresistible!

The well-known case, cited by Lord Coke, of the uncle executed for the supposed murder of his niece, furnishes an illustration. She abandoned his house, and upon search could not be found. She had been overheard to say, upon an occasion when he was correcting her, "Oh, good uncle, do not kill me!" She was entitled, at a certain age, to receive from him her property. This fact furnished a motive. Unable to produce her at the assizes as directed, he dressed up another girl to represent her. The detection of the falsehood afforded conclusive circumstantial proof of his guilt, and his life paid the forfeit. Some time afterwards, she appeared, to claim the property.

Jonathan Bradford's case is equally striking. He was an innkeeper. A guest was found in a chamber weltering in blood at midnight. Bradford was standing over him, with a bloody knife in one hand,

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and a dark lantern in the other; and upon apprehension he exhibited great terror. The guest had been robbed: here was a motive. The unfortunate Bradford was convicted and executed; but it afterwards appeared that the crime had been committed by another, who escaped from the room as Bradford entered.

These cases are perpetual monuments and beacons, to warn jurors of the great danger and hazard they encounter in convictions upon circumstantial testimony. Better, by far, that ninety-nine guilty persons should escape, than that one innocent should suffer.

"And the greater the crime," says a distinguished writer upon evidence, "the greater the caution to be used. Anxiety to detect crime often leads witnesses to draw rash inferences; there is a pride and vanity of the human heart felt in drawing conclusions from a number of isolated facts, which is apt to deceive the judgment."

Mr. Solicitor has pointed to the beautiful emblem of Justice, which adorns this judgment seat. In one hand she holds the avenging sword, and with the other balances the scales. He bids you also to weigh the testimony. Not so, gentlemen; not so. Capital convictions are not to be made upon the preponderance of probabilities.

Upon the whole case, I submit, the prisoner is entitled to an acquittal. Go on to investigate the facts, even with minds prejudiced against her, and

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doubts will arise upon doubts at every step of your progress; doubts reasonable and insuperable.

Gentlemen, the authorities of the Government appointed yesterday as a day of general thanksgiving. Our people were bidden to abstain from all secular pursuits, and to repair to their respective places of worship, there to render thanks to Almighty God for all His beneficent kindnesses. His Honor justly deemed it an act of mercy and necessity to continue the sittings of this court. Yesterday was no day of thanksgiving for my unhappy client: it was to her a day of trial, humiliation, and sorrow. Today, you can make one heart glad. God grant that you may feel authorized to unloose the prison doors and set the captive free; that today, nay, that the rest of her life, may be one perpetual day of thanksgiving to Almighty God for so great an additional mercy vouchsafed unto her.

Speech of Mr. Dobbin

GENTLEMEN OF THE JURY:

I HAVE been employed by the brothers of the late Alexander C. Simpson to coöperate with the State in the trial of the prisoner. The task is delicate and embarrassing, but shall be executed, at least faithfully and fearlessly. I shall search for the truth in an effort to bring the transgressor to

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punishment and to vindicate the majesty of the law. Eloquence, full of touching pathos and thrilling heart-stirring appeals, has caused you, and more than you, ever and anon, to weep in sympathy for the "poor unfortunate" at the bar. I shall neither strive to stir your prejudices, nor bid you crush your generous sensibilities, nor murmur that you do not coldly chase away the starting tear. But I solemnly warn you as sworn men — *those tears are not to blot out the law!*

If the voice of humanity admonishes you to deal tenderly with the "poor woman" and not rashly to consign her to death, the voice of humanity also bids you beware how you thoughtlessly, in a moment of feeling, surrender your better judgments, and say to the wicked, "Go on in your iniquity, and do your deeds of dark atrocity."

You are told that she was the deceased's wife, and the shocking unnaturalness of the crime is made to plead for her innocence. Wife — husband — endearing terms, indeed! And the Christian heart recoils with horror from the contemplation of such dreadful depravity. But, alas! while it hath been truly said, "Seek the good wife of thy God; she is the best gift of His providence"; it hath also been said, "*An artful, false woman shall set thy pillow with thorns.*"

You have been told of her beauty, too, and my distinguished friend, Mr. McRae, has held up before you the picture of her girlhood days — when her

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life glided on sweetly amid sunshine and flowers, a life now darkened and beclouded, with the light of heaven only reaching her through iron grates — with the officers of the law now inviting you to cruelly consign her to an ignominious grave, and to hurry her into eternity! The picture was by him beautifully sketched, and held before you with the skill of one who knew you had hearts that could feel.

Gentlemen, I complain not of the counsel; but when, in his eloquence, he spoke of hurrying one into eternity without warning, neither I, nor you, nor any one of this vast concourse, could avoid the contemplation of another, and if possible, a more touching picture. A youthful stranger came among us, to seek our generous hospitality. Troops of friends cheered him on. Perhaps the sun never shone on a kindlier youth. Captivated by the charms of one who seemed the lovely woman, he blended his destiny with hers. Ann K. Simpson became his bride. For a season his pathway was checkered over with sunshine and cloud; and then there was seated on his brow, care, gloom and anxiety; and in a moment, *unwarned*, the grim tyrant lays his icy hands upon him.

Poor Alexander C. Simpson is in his grave, and his widow is the prisoner at the bar. And while I, too, warn you, not rashly and impetuously to consign her to an untimely end, but to acquit her, if, in the language of the law, you have “a reasonable

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doubt," I also warn you, that if the testimony has convinced your minds, and points you to the hapless prisoner, as the one who did the dreadful deed in a moment when poor human nature yielded to the tempter, then — in the face of your countrymen — in the sight of high heaven — you cannot — will not — *dare not shrink from pronouncing the awful doom.* God forbid that I should, in a moment of ardor, appeal to your passions! God forbid that you, in a moment of feeling, should forget your duty!

Is Alexander C. Simpson dead? That is admitted. Did he die a natural death, of some insidious disease, or was he the victim of the murderer? The State alleges that he was poisoned by the introduction of arsenic into the stomach, and that Ann K. Simpson administered the fatal drug, knowingly, maliciously, and with the intention to take his life.

Gentlemen of the jury, it would be a deplorable state of things, if the practice of secret poisoning could be successfully indulged without the fear of detection. It would be deplorable, indeed, if a *popular delusion* should exist on this grave and solemn subject. But, thank God, science, chemical analysis, actual experiment, has in our day established the truth clearly as any truth in science, that where poison is administered and death ensues, its *presence* may not only unquestionably be detected, but whether or not *it, and it alone, caused the death,* may with equal certainty be ascertained.

Dr. Christison, whose learned treatise on poisons

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is regarded by all in this country and in England as the highest authority, informs us that the evidence of the existence or non-existence of poisoning is derived from the symptoms during the life.

In this case Drs. Mallett and Robinson, the attending physicians, well known as gentlemen of learning and experience, both give their opinions together with the grounds on which they are based, and the lucid explanation of the analytical experiments which occasioned them, which we submit are not only entitled to your *respect*, but must irresistibly have forced the conviction on your minds, and on the mind of every intelligent listener, *that arsenic caused the death of Simpson*. A brief reference to the learned works of Christison, Orfila, Taylor, Turner, Beck and other authorities which treat on the interesting questions involved here, will satisfy you beyond the slightest controversy, that those gentlemen have formed their opinions in strict accordance with the principles and rules therein prescribed, and that the formation of any other opinion would be recklessly disregarding all the teachings of science, and the results of the observations and experiments of the past and the present age.

Now, before proceeding to compare their tests and experiments with authorities let us first inquire whether the symptoms were such as arsenic produces. Remember, the evidence is that the deceased drank a cup of coffee at the instance of the prisoner, on Wednesday evening. *As soon as he drank he*

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complained of being sick. The witness Smith, who testifies to this, remained about twenty minutes, and left, and on returning to breakfast next morning, was informed by the prisoner that *Mr. Simpson had been sick all night*. Dr. Mallett called in then to see him. Prisoner and deceased both told him he had been sick all night, *of vomiting, nausea, burning pain at the pit of the stomach, and thirst*. He called again in the afternoon and found his symptoms aggravated: distressed countenance; evacuations from the bowels, he was informed, were of a dark color. No mention was made of blood to the doctor, who did not himself see the discharges.

Now hear what the learned Dr. Christison says, on page 237 of his work on poisons. He is speaking of the effects of arsenic:

Soon after the sickness begins, or about the same time, the region of the stomach feels painful, the pain being commonly of a burning kind, and much aggravated by pressure; violent fits of vomiting and retching then speedily ensue, especially when drink is taken. There is often also a sense of dryness, heat, and tightness in the throat, creating an incessant desire for drink. In no long time after the first illness, diarrhoea generally makes its appearance, but not always.

Now, gentlemen, recur to the description of the deceased's sufferings, as testified by Miss Arey and Dr. Mallett: *Thirst, burning pain in the stomach, vomiting, nausea, evacuations*. But it was contended by the counsel for the prisoner, that there

could not have been arsenic either in the syllabub or the coffee, because, say they, it would have brought on the symptoms earlier.

Let us recur to the evidence, and compare it with the authorities. The evidence is, that as soon as he drank the coffee, he declined another cup, and complained of *feeling sick*. Smith sat with them about twenty minutes, when the prisoner was trying Mr. Simpson's fortune with a cup, and talked of the sick bed, coffin, and muddy road, and told Mr. Simpson he was going to be sick. Now, how soon after Smith left the symptoms began, we may not be positively certain; but Dr. Mallett and Mr. Smith both tell you that in the morning either the prisoner, or Simpson, or both, said *he had been sick all night*.

Now, if he had been taken early in the morning, or after midnight even, would they, or either of them, have said he had been sick all night? The State alleges that his sickness either began immediately after drinking the coffee, and was occasioned by the arsenic in the coffee, or he felt bad from the arsenic in the syllabub, which may have been but a small portion, and after drinking the coffee felt worse, and declined taking more, and that the bad symptoms began soon after Smith left, and continued growing worse, until he died the next night.

But, gentlemen, hear what Dr. Christison says, on page 43. He is speaking of *Symptoms*:

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The first characteristic is the suddenness of their appearance and the rapidity of their progress towards a fatal termination. Some of them act instantaneously, and the effects of most of them are in general fully developed within an hour, or little more. But this character is by no means uniform. The most violent may be made to act, so as to bring on their peculiar symptoms slowly, or even by imperceptible degrees. Thus, arsenic, which usually causes violent symptoms from the very beginning *may be so administered as to occasion at first nothing more than slight nausea, or general feebleness; and afterwards, in slow succession, its more customary effects.*

Now, gentlemen, when you recollect that the prisoner had consulted Mrs. Rising, who may in her secret counsels have found out and told Mrs. Simpson how to administer the arsenic so as to make it operate slowly, and that he complained of being sick immediately after drinking the coffee at supper; and that he suffered all that night the peculiar symptoms described as being produced by arsenic, and compare these facts with not only the opinions of the physicians but the particular opinion of the learned Christison, are you not satisfied that the evidence from the *symptoms* is strong and convincing? The State, however, is far from relying exclusively on this evidence. There was a *post mortem* examination of the body in a day or two after the death. Let us see if the *morbid appearances* therein correspond with the usual appearances occasioned by arsenic. Drs. Robinson and Mallett tell you the

stomach was inflamed. I think one of them used the expression, "A blush of inflammation." They say the *intestines* were *inflamed*; that there were several erosions, or ulcers; and Dr. Robinson expressly stated, that *there were small white particles near and in these erosions*, or ulcers.

These are precisely such appearances as the physicians and the books tell you arsenic would produce. And, in regard to these specks, or particles, that were found in and near these erosions, hear what Christison says, in speaking of arsenic, on page 269:

"Frequently, it adheres to the coat of the stomach and is there either scattered in the form of fine dust, or collected in little knots. The adhering particles are, always covered by mucus: they are often surrounded by redness of the membrane, or by effused blood; *and sometimes they are embedded in little ulcers.*"

Now, gentlemen, one of the counsel read to you an extract from Christison, warning you against these particles, in which he said that you must not hastily consider every white powder in the stomach, arsenic; but remember, that the physicians expressly told you, that they picked some of these white particles from the stomach and subjected them to *chemical tests and the result was conclusive that they were particles of arsenic.*

The State did not stop the investigation here, but introduced before you the evidence derived from *chemical analysis.* The physicians tell you, that after the contents of the stomach of the deceased

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had been evaporated, boiled with distilled water, and filtered, they resorted to a series of experiments, in accordance with the rules prescribed by the highest authorities and the most learned chemists, and the results produced were such as to authorize them to say, in the presence of their God and this vast assembly, that they have *no doubt* of the existence of arsenic in the stomach; and from the absence of any other peracute indications of disease in the heart, liver, lungs, or elsewhere, that they have also no doubt that *arsenic caused the death* of Alexander C. Simpson.

Now, gentlemen, the books, as well as the physicians, inform you that arsenic in a state of solution may be detected by what are called *liquid tests*. Dr. Christison, speaking of the process by liquid reagents, says:

“The most characteristic and precise are hydrosulphuric acid — ammoniacal nitrate of silver and ammoniacal sulphate of copper. The indications of the three tests must concur; otherwise in a medico-legal case, no one can be entitled to speak with certainty to the existence of arsenic; but when they do concur, the evidence is unimpeachable.”

Drs. Robinson and Mallett told you that a portion of the filtered solution from the stomach was subjected, first, to the ammoniacal nitrate of silver test, giving first a precipitate of light yellow or lemon color, afterwards changing to a brownish hue. Well, Christison says that this test produces a

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“lively lemon yellow precipitate of arsenite of silver which passes to a dark brown under exposure to light.”

They told you that they subjected another portion to the *ammoniacal sulphate of copper test*, and the result was a precipitate of an *apple-green color*. Dr. Christison says, on page 209, that this test “causes in solutions of the oxide of arsenic, an apple-green or grass-green precipitate of the arsenite of copper.”

They told you, that with another portion, after mixing with it a few drops of pure hydrochloric acid, they boiled pieces of bright copper until an iron-gray coating formed. This, you will remember, they called Reinsch’s test, and the result produced is precisely in accordance with the authorities, and more particularly with the account given by Taylor, in his work on *Medical Jurisprudence*, on page 134, a work so often referred to on this trial. They told you then, gentlemen, in order to test the experiments conclusively, that they procured a genuine article of arsenic, made a solution of it, treated it in the same way with the various liquid tests, and in each case a similar result was produced.

They then related to you another experiment, the results of which must unquestionably have forced conviction on the most unwilling minds. They took some of those white particles which they picked from the stomach, put them into a test tube, with a flux of dried carbonate of potassa and charcoal, over

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the heat of a spirit-lamp, and what is known as the *metallic ring* was formed *distinctly*. You will remember, then, they stated that that portion of the tube on which the ring was, was cut off by means of a file, and placed in a larger tube; heat was applied, and *crystals sublimed*. Distilled water was poured in and boiled until the crystals dissolved. To one portion the ammonio nitrate of silver test — to another, ammonio sulphate of copper test — to a third, sulphureted hydrogen gas was applied; *all giving the characteristic precipitates of arsenical compounds*.

Then, gentlemen, Dr. Colton was examined. Drs. Mallett and Robinson are fully sustained by Dr. Colton. He, too, applied the two liquid tests which I have mentioned, and the results were the same. Water charged with sulphureted hydrogen gas caused a yellow precipitate. He then took some of the precipitate derived from the sulphate of copper test, dried it, and put it into a tube with charcoal, and subjected them to the heat of a spirit lamp and an *iron-gray ring* and *crystals sublimed*. The same precipitates and some of the white particles were subjected in the proper way by him to blow-pipe heat, and exhaled the *garlic smell*. He then took a known solution of arsenic itself, and it produced like results.

I have endeavored hastily to present before you the evidence of these scientific gentlemen. And now, gentlemen, are you surprised that they all

concur in saying they have no doubt about the arsenic in the stomach of the deceased? And, gentlemen, can *you* doubt, after hearing this testimony, and reflecting on it? It was natural that the counsel for the prisoner should strive to weaken the force of this powerful testimony. They have occasionally resorted to ridicule, to cause you to regard with laughter and contempt this display of science. They have read to you various short extracts from the books which were calculated to cause you to hesitate and distrust; but, gentlemen, these physicians are fully acquainted with those very authorities: They have made them their study; and from the teachings of those books themselves they tell you they *have no doubt*.

It was said that the ammonio nitrate of silver test was not satisfactory because, when there is a minute portion of arsenic, the characteristic precipitate cannot always be obtained. But, remember, here it was obtained in *great abundance*.

Remarks were also made of a somewhat similar character about the sulphate of copper test; but, gentlemen, remember, that all the tests produced the usual results which a solution of arsenic produced when subjected to the same; and Christison expressly says, "When they do concur, the evidence is unimpeachable." Then there was the garlic odor from this solution, *peculiar* to arsenic. And, again, the contents of his stomach were not offensive from putrefaction; and the books and physicians both

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tell you of the strong antiseptic virtues of arsenic, which undoubtedly had this effect in this case.

I apprehend, gentlemen, that neither you, nor His Honor, nor any intelligent listener here, can entertain a rational doubt that the deceased came to his death by means of arsenic in the stomach, unless you stopped your ears and suspended the operations of your reasoning faculties.

But, gentlemen, the most important, the most solemn, the most painful inquiry yet remains. *Who administered the fatal poison?* The State alleges that the prisoner did the deed—that the *wife* murdered the husband. Is this true? You shudder at the thought. So awful the crime, so unnatural, so unreasonable! Let us cautiously examine the testimony. But before alluding to the testimony, allow me to read from some of the best authorities known to the law, a few brief extracts to enlighten you as to the character of circumstantial evidence, the force and weight it is entitled to, lest you may do yourselves and the law and the State injustice by withholding from this species of evidence that confidence which you are bound to give it, lest you may be misled by the ignorant notion that *positive* evidence *alone* is sufficient.

Perhaps, gentlemen, I do you great injustice to suppose for a moment that in this enlightened age, there is a man in that jury box capable of entertaining wrong prejudice against this species of evidence. But the language of the law is so clear and

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convincing, and will shed so much light on your path, that, I take it, you will prefer to hear it.

I quote first from *Starkie on Evidence*, a treatise so high in its character, that no commendation of mine can add to it as an authority:

“On the other hand, the virtue of circumstantial evidence is its freedom from suspicion, on account of the difficulty of fabricating a number of independent circumstances, naturally connected, and tending to the same conclusion. In theory, therefore, circumstantial evidence is stronger than direct and positive evidence, wherever the aggregate of doubt arising, first, upon the question whether the facts upon which the inference is founded are sufficiently established, and secondly, upon the question, whether assuming the facts to be fully established, the conclusion is correctly drawn from them, is less than the doubt whether, in the case of direct and positive evidence, the witnesses are entirely faithworthy.”

I quote next from *Best on Presumptions*:

“A number of circumstances, *each individually very slight*, may so tally and confirm each other, as to leave no room for doubt of the fact they tend to establish.”

Now, to speak, says Mr. Bentham, of greater numbers, take even two articles of circumstantial evidence, though each taken by itself weigh but as a feather, join them together and you will find them pressing on the delinquent with the weight of a millstone.

Let us here inquire, did the defendant have a

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motive to prompt her to kill her husband? Did she desire his death? Mark the answer of the State, sustained by the testimony: Yes, she had the motive — the all-absorbing motive — the motive that the history of the world tells us, and our knowledge of human passions tells us, hath alas! too often driven on frail mortals to deeds of blackest atrocity. She loved another! By her actions, and out of her own mouth, she proclaimed that she loved another — aye, and better than she loved poor Simpson — her own husband! Harken to the plain testimony of Miss Register, whose modest, cautious and gentle demeanor on the witness stand showed that she gave no coloring to the facts designedly unfavorable to the prisoner, and whose character was unassailed and is unassailable:

“I have often heard Mrs. Simpson, not long before Mr. Simpson’s death, say that she loved another better than him; that she had loved him before she married Mr. Simpson, and was engaged to be married to him, but her friends broke it off; that she had not loved Mr. Simpson, but married him to get a home; one morning, about a month before Simpson’s death, Mrs. Simpson said to me, ‘Here is a note I found on the table from Mr. Simpson,’ and among other things the note said, ‘Ann, I once thought you loved me, but now I have reason to think you love another better than me.’”

Gentlemen, pause, dwell a moment on this startling first act in this dreadful tragedy. Know ye anything of the human heart? Know ye anything

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of the human passions — love — hatred? What will not love prompt one to do for the one who is loved? What hath not malice maddened one to do to one who is despised?

She loved another; she never loved Simpson; she married him for a home. And now mark the point. The charm of concealment is broken; poor Simpson has found it out, and says, “Ann, I once thought you loved me, *but now* —” Gentlemen, to *love another* might tempt her to do wrong; to *hate* Simpson might urge her on still more; but to know that *he knew it* would of all things be the surest to fill her with rage and madness, and drive her to desperation and crime. Are you not satisfied that she had the motive? Did she have the opportunity? Gentlemen, she was his wife, in whom he trusted; she presided at his table; she prepared his syllabub, and she sweetened his coffee! Did she have the arsenic? Gentlemen, young Mr. Smith discloses the terrible fact, that on the 3d of November, he sold one ounce of arsenic to Mrs. Simpson — just five days before the death!

Then here is the motive, the opportunity, and the fatal poison in her hands, just five days before his death — and that poison the same article which the physicians say they have no doubt caused the death of Alexander C. Simpson.

But let us proceed — let us see if there be not link after link, until a chain is formed, that necessarily, irresistibly binds down the prisoner at the

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bar. Mark her conduct before his death, at his death, after his death.

Do you remember the testimony of Samuel G. Smith, a man of truth, recognized by all as a trustworthy, respectable man? Mr. Simpson died on Thursday night. On Wednesday, at dinner, Mrs. Simpson placed a glass of syllabub at her plate, and another at Mr. Simpson's, and excused herself to Messrs. Whitfield and Smith for not having some for them, as they were Sons of Temperance. He ate his syllabub, and on asking for more, she gave him her glass. At tea that evening, although she had been in the habit of giving Mr. Smith the first cup of coffee, on receiving from her the first cup and beginning to stir it, his attention is suddenly arrested by her exclaiming, in a positive and animated tone, "Mr. Smith, I said that was Mr. Simpson's cup." He passed the cup — Simpson drank the coffee, and on being asked by her to take another cup he declined, remarking that he felt sick! That night is spent in agony — vomiting — nausea — pain!

At dinner on the day of his death, when he, in the next room, was in all the distress and suffering and writhing pain that a poisoned victim experiences, she says to Mr. Smith, "Mr. Smith, what effect does arsenic have on anything?" Ah! gentlemen, why this inquiry? What has set her to thinking about the effect arsenic has on anything? *She said* she threw what she bought under the sand. But did

she? And why did she say she had thrown it under the sand? Was she thinking that remarkable symptoms might create talk and suspicion? Was she thinking that as young Smith could prove, if the crisis arose, that he sold her arsenic just before Mr. Simpson's peculiar suffering, that she had better say she had thrown it away? And did the hapless, unfortunate girl, in her weakness, deceive herself with the idea that she could thus deceive the world?

Poor, deluded, fallen creature! We cannot but pity her, even in her depravity. Ah! gentlemen, "Murder will out." The perpetrator of crime rarely accomplishes his deed without leaving some vestige to disclose his guilt. That little circumstance about the coffee, his being sick just after he drank the coffee, seem trifling, unconnected with other facts; but when they are all collected in one mass, do they not press with the weight of a millstone on the prisoner at the bar?

But look a little farther into the poor woman's conduct. Just after the fatal cup had passed from the lips of the doomed victim, she takes another cup, not to drink, but to read in it the fate of her husband. She turned the cup, saw a "*sick-bed*, and a *coffin*, and a *dark* and *muddy* road," and told Mr. Simpson he would be sick, and spoke of fortune telling and of death! Gentlemen, did her thoughts and her wishes, and her designs, lend a coloring to the cup? The jaundiced eye lends a color to the object on which it gazes. Why, on that

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night, at that time, just when the sickening cup had passed from the poor man's lips, why were her dreams and her thoughts of sick beds, of coffins, of dark and muddy roads — of fortune-telling, of sickness, of death? And on that night Simpson's terrible agonies begin, and on the next night he dies.

Was she endowed of a sudden, with capacity to foresee and foretell? Or did she know that the fatal dose had been given to poor Simpson, and even in her depravity, could hardly suppress the feeling *darkly* and *mysteriously* to hint to the poor man, and set his thoughts on death, and the gloomy fate that was soon to befall him?

But, again, let us look a little more into her conduct before the death. Were you not shocked at the testimony of Mrs. Butler? She testified that she repeatedly saw Mrs. Simpson at Mrs. Rising's, the fortune teller; saw them turning cups; heard the fortune teller pity Mrs. Simpson one day when she complained about Mr. Simpson, and heard the fortune teller then say to her these words, that tear away the thin veil of mystery and secrecy sought to be thrown over this tragedy: "*If you will do as I tell you, he will not be a living man for a week.*" Ah! gentlemen, what does this mean? What had the disgusting creature, the fortune teller, told her to do? Had she told her to give the poor man arsenic? "*If you will do as I tell you, he will not be a living man for a week!*" *Something* is to be done, and then

Simpson is to die, and that *something* is to be done by the prisoner.

Yes, gentlemen, and something is done; arsenic is given to Simpson, and he dies. And mark ye on the very night of his awful death, when his vital spirit had just taken its flight, and the clay tenement left behind was scarcely cold, when friends were piously dressing the body for the tomb, what was the conduct of the prisoner? In another room of the *same* building — *without a tear in her eye* — the poor, giddy, hapless prisoner, says to Miss Arey: "*What the fortune teller, Mrs. Rising, told me has come true. She told me Mr. Simpson would live but a week; and that I would marry again, and marry the one that loved and courted me before I married Mr. Simpson!*" Pause and think on this! Was this the grief of one whom God had made a widow or the uncontrollable joy of one who had done her work?

But mark her conduct again. When Simpson was in his inconceivable agony, Dr. Mallett says she placed her hands on his brow, he turned his head from her, and her cold remark was, "Ah! you are a touch-me-not to-day." Gentlemen, did the poor man, when he turned his head from her, have suspicions that there had been foul play? Did she show the tenderness of a true woman when she coldly said, "Ah! you are a touch-me-not to-day"?

What caused the death of Simpson? Scientific and learned physicians and chemists answer,

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arsenic. Who had purchased arsenic but a few days before his death? The testimony says, *the prisoner at the bar*. Who was tired of poor Simpson and loved another, and consulted fortune tellers about his death? The testimony says, *the prisoner at the bar*. Whom did the fortune teller advise to do something, and then Simpson would not live a week? The testimony says, *the prisoner at the bar*. Who, with positiveness almost amounting to a command, caused another to hand to Mr. Simpson the coffee which he was about to take himself? *The prisoner at the bar*. Who prepared that particular cup of coffee, after drinking which Simpson complained immediately of feeling sick? *The prisoner at the bar*. Who was inquiring about the "effect of arsenic on anything," when Simpson was in agony in the next room, the very day of his death? *The prisoner at the bar*. Who, without a tear in her eye, in a few minutes after his death, talked coldly of his death and of marrying the one she loved? Miss Arey says, *the prisoner at the bar*.

And now, gentlemen, *you* have to pronounce whether the prisoner is guilty or not guilty. I have endeavored to do my duty. The brothers of the dead man employed me to assist the State in thoroughly searching out the truth of this case. Neither they, nor I, desire you to make a victim of the prisoner. If you can, in spite of all this array of evidence, still say you have a "reasonable doubt," humanity and the laws, too, admonish you to acquit

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her. God forbid that I should ask you to turn a deaf ear to the voice of humanity, or rashly to trample on a benign principle of the law.

But, gentlemen, if the testimony rivets conviction on your minds, that she did that deed of monstrous depravity and cruelty, that she administered the fatal dose that hurried poor Simpson to an untimely grave, then I charge you as honest men, as good citizens, as sworn jurors, to do your duty, and, painful as it may be, to pronounce her guilty.

Speech of Mr. Strange

MAY IT PLEASE YOUR HONOR, GENTLEMEN OF THE JURY:

I RISE in defense of a prisoner, against whom, guiltless (as before God I believe her to be) of the charge preferred against her, the cry of the rabble is raised. Thousands are athirst for her blood and all have deserted her but her faithful mother, who clings to her through good and evil report, has been with her through her imprisonment, and now pillows her head upon her bosom as she lies almost lifeless in the prisoner's box. Her own sex, so kind and benevolent on most occasions, are the first and the loudest in swelling the cry against her. From them comes to her no look of encouragement; for her, no tear of sympathy is on their cheeks in this her hour of bitter suffering.

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It has been remarked that this is a most extraordinary case. It is, indeed, extraordinary. Hitherto we have been wont to see the outcasts of society brought to the bar. But now, something which has assumed the name of Justice, as if disclaiming an ordinary victim, has gone forth into one of the most respectable families in our county, and dragged from thence a being, almost a child, fair and beautiful, in the very bloom of womanhood — to furnish food for one of the strange appetites of man. The mysterious death of one of the species is an occasion on which the noble and rational part of our nature is dethroned by brutal fury; and like a herd of cattle that have smelt the blood of some slaughtered comrade, men are found galloping over the plain, filling the air with horrid bellowings, ready to destroy anything that comes in their way.

Such an occasion is the present. A man has died in great agony, and under circumstances of mystery, and the brutal nature of man has been aroused, and in its fury, ungoverned by reason, it rushes at the prisoner with a purpose to destroy. Is there no chivalry left amongst us that will enter the arena against these infuriated beasts, and defend this young creature from destruction? So contagious is the madness, that it has seized even upon those whom we should least suspect, and somehow or other this prosecution is not left to the able gentleman to whose duty it appertains, but another talented member of the profession is also engaged in its enforcement.

He tells us that he appears for the friends of the deceased Alexander C. Simpson, as the avenger of their wrongs. Pray what interest ought any real friend of Alexander C. Simpson to have in this prosecution? Will the execution of this widow bring him up from the dead, and give him back to the embraces of these so-called friends? Is it not enough that their friend has died mysteriously — that he hath fallen prematurely into the grave? Will it lessen their sorrows, or give to them a family trophy, that his widow shall die by the hand of the common hangman, and the fate of a felon await her remains? If such a satisfaction be desirable to them, are you inclined to give it to them?

We do not complain that this trial is brought on; on the contrary, we think it right that this investigation should be made. There are circumstances of mystery about the death of the deceased that call for examination, a full and free examination. The prisoner herself has courted, and still courts this examination. It is due to her, as well as to the public, that it should be made.

Among the circumstances pressed against this prisoner is the fact of her flight. What of her flight? The newly made widow is sitting in her desolate chamber. One enters and tells her that poison has been found in the body of her deceased husband, and that she is suspected of having put it there, and, in fact, that the grand jury has found a bill against her; that from the peculiar opportunities which she,

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as a wife, had for its administration, the presumption will take place that she was the perpetrator, and, unreasonable as it may seem, would be required to prove her innocence, not the State to prove her guilt.

All this, perhaps, she would have met. But she is also told that this is Thursday, and that it is Thanksgiving day, and today no business will be done in court, and it is now even the evening of that day. To-morrow is Friday, and it is not likely that a trial so important will be taken up during this term. Whether innocent or guilty, then, you will have, for the next six months, to consort with knaves and felons and the basest of mankind. You, whose infancy was spent beneath a father's roof in the pastimes of innocence, under the smiles of maternal love, and whose later years have been passed within the protecting arms of a husband, must now go, alone and friendless into the felon's dungeon, shut out from the light of day, and from the fresh air of heaven, for at least half a year.

"With whom," well might she exclaim, "shall I take counsel? Alas! he who was my friend and safe counsellor now lies in the dust. He, who, could he now speak from the grave, would be the faithful and true witness in my behalf, the only one who could testify certainly of the facts, is no more, and those who profess to be his friends are now prosecuting me as his murderess. Merciful God! what shall I do?" Is it any wonder that she fled?

And is this flight to be taken as a sign of guilt? If her flight be any evidence against her, what is her volunteer return? Having fled, to make that flight effectual she must go where the wing of the American Eagle had never spread and beyond the reach of the beak and talons of the mighty bird. This she did, and in a foreign land might have remained beyond the reach of the vengeance of any law of ours, for as long a time as it might have pleased Almighty God to prolong her life.

But there, too, the clouds of suspicion and prejudice hung about her with a continual gloom. Life was a burden spent under the leprosy of disgrace and infamy, and to rescue the name of the family to which she belonged from the cruel blight that had fallen upon it, she once more encountered the seas and traversed the desert, to confront her accusers — to look death in the face with the fearless eye of innocence. Is not this more than an answer to her flight? Does it not prove beyond all question that her own conscience, at least, is unstained with a sense of guilt?

We read that in ancient times, a citizen was once traversing the street of a populous town, when suddenly a snow-white dove flew into his bosom, and quietly nestled near the throbbing of his heart. Surprised at the incident, he cast his eyes upwards, and beheld a ravenous hawk hovering above him. He did not cast out from his bosom the timid guest, but cherished the poor bird, and saved it from the talons

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of its relentless foe. Gentlemen, the prisoner has, as this timid bird, come to your bosoms, escaping from those who are seeking her life, who are seeking the ruins of her fame, dearer than life. Will you, let me ask you, cast her forth a prey to her enemies, or, like the kind citizen, cherish and protect her?

But the State says, this is a court of justice, not a court of mercy, and you must judge the prisoner according to the rules of rigid justice. Gentlemen, can this be so? Shall men who expect mercy to be weighed with the justice they are to receive from their heavenly Judge, mingle no mercy with their judgment of each other? We ask you not for that mercy which shall acquit the prisoner although she may be guilty, but we ask you, in inquiring of her guilt, to look upon her conduct by the light of charity; where her actions admit of a favorable and an unfavorable construction, let mercy guide you to a kind result; set down naught in malice, but judge her as you would *fain* be judged by others in your hour of trial.

As to the death of Simpson, there can be no doubt.

"After life's fitful fever, he sleeps well."

But is it so wonderful that men should die, when we are told that it is even probable that at every step we tread, our feet are on the ashes of some deceased member of our race? Nor is it wonderful that men should die suddenly, or even die of

poison, and that without any intentional administration by the hand of an assassin.

But did the deceased die of poison? The State insists that he did, and refers first to the symptoms. But, "although these were once much relied on, they are now regarded as furnishing only a high probability" (Dean's *Medical Jurisprudence*, 305). They ought hardly to amount to that, for it is admitted by the same author, and the authorities he quotes, that natural diseases are formed with symptoms so much like those produced by poison it is scarcely possible to distinguish them.

The State also points to the appearance of the body on *post mortem* examination. "These, also, were formerly much relied on," says the same author, "but with little reason" (page 309). And here let me ask what propriety there is in determining the guilt or innocence of a person — and especially in a matter affecting life — by the opinions of experts of a profession ever changing in its principles and practices? As unstable as the sands on our sea-coast, where to-day a seventy-four may float, to-morrow an impassable sand-shoal is formed; and where the sands are now tossed about by the winds, in a few days a ship-of-war may ride in safety. But so far as symptoms may guide us, there is one symptom, to wit, acridity in the throat, which no witness speaks of the deceased having ever felt. In speaking of the distinctive marks between the effects of arsenic and Asiatic cholera, Dean, at page 323, says,

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“The sense of acridity in the throat in the case of cholera, succeeds the vomiting; while, in poisoning, that same sense precedes it.” If acridity, then, precedes the vomiting, where there is no acridity there can be no poisoning. And this is consonant with reason; for the throat is necessarily passed by the poison in being swallowed; and there seems to be no good cause for its not eroding the throat in its passage, as well as the stomach and the intestines after its descent. In cholera, the offensive matter is formed in the stomach, and of course only affects the throat in its ascent; while the poison, coming into the stomach from without, must needs pass the throat as it goes down. How can this negative proof in favor of the prisoner be avoided by the State?

The State also relies on evidence from chemical analysis. On this subject, gentlemen of the jury, you should be exceedingly cautious. Remember that you are venturing into a dark country entirely unknown to yourselves, with a dim light and a blind guide, and that one false step may produce irreparable mischief. It is no excuse for rashness to say that it is a subject on which it is difficult for the State to make clear proof, and that to require it would be to give the prisoner a free charter. If the State cannot show that poison really exists, then it fails to show that there is any prisoner to be punished. On many subjects the jury is already so well informed, and the witness himself so familiar with the matters of which he has to speak, that there

is no difficulty in apprehending and communicating the truth. But in dealing with poison, arsenic for instance, who possesses this experience, this familiarity with the subject? There is but one thing by which even the most skillful can surely test its presence, and that is by reproduction in the form of the octahedral crystals. In this respect it ranks among the salts, each of which is distinguished and distinguishable only by the peculiar form of its crystals. And as to the odor, about which much has been said, this only appears upon the application of heat. By the experts examined on this occasion much importance has been given to it; but Dean says, page 342:

“There are some other tests, such, for instance, as its alliaceous or garlicky odor. This is evolved by the sublimation of metallic arsenic only, and not by the oxide. The objection to this is, that it does not always detect arsenic when present, and that the same odor affords no infallible proof that it is present. Zinc, phosphorus, powder, phosphoric acid, and the phosphates give out a similar odor.”

It may be added, that the very name alliaceous imports that the vegetable tribe of garlic will certainly yield it. There is no reliance upon the odor. Equal uncertainty hangs over the quantity that will produce death. And what quantity was found (if arsenic at all) in the body of the deceased has been merely guessed at.

There was another mode of proving the presence

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of arsenic if it had been there, namely, experiments upon animals. These were easily made, and yet, although our own town is infested with cats, dogs and other useless animals, not a single experiment of the kind was made, and for aught that has been shown in this way, there may have been nothing in what the chemist calls the suspected fluid injurious to the health of any animal. Why were not such experiments made? The State had everything under control, and not having furnished this evidence against the prisoner, the prisoner is entitled to the benefit of every inference therefrom in her favor.

Let us now examine the moral circumstances as they are called. The first moral circumstance stated by authors is, "suspicious conduct of the prisoner before the event, such as dabbling with poisons, conversing about them, and showing a knowledge of their properties." "The medical witness," says our author (Dean, 315), "may be called upon to state the extent and accuracy of the knowledge which the prisoner manifests by his acts and conversations."

Now, the only evidence on the part of the State, relative to the prisoner having dabbled with or talked about poisons, is her having on one occasion bought some avowedly for the purpose of poisoning rats, and that, on another, she asked the witness Smith what effect arsenic had on things that took it, stating that she had bought some to poison rats, but learning that it was dangerous, and fearing that it might get into the food and do mischief, she had

thrown it under the sand. This is relied on as furnishing the first moral indication against the prisoner.

Much has been said in this case about the value and effects of circumstantial evidence. I am not at all disposed to question either the necessity for it, or its ability to satisfy the mind. All that I ask is, that the prisoner may have the same benefit of circumstances in her favor as the State claims for those against her. And I can with confidence assert, that if the circumstances making for the prisoner are weighed against those making against her, and the balances are held in a fair and even hand, the prisoner has nothing to fear, that there will not only be room for rational doubt, but that her entire innocence will be made as clear as the noonday.

Let us, then, look at this conversation with Mr. Smith, about the effects of arsenic. The State says that it was held at the very time that her husband was lying in an adjoining chamber, under the agonizing effects of that fatal drug. In this we believe Mr. Smith is entirely mistaken, at least as to the time, and has omitted the very important fact, that the conversation, when it did take place, was in the presence of the deceased. This, we believe, he stated in his examination before the coroner, and this would be the statement of Mr. Whitfield, the other State witness, acknowledged by Mr. Smith to have been present at the conversation. But let that pass; suppose it to have taken place just at the time and

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under the circumstances Mr. Smith now states. Is it likely that with the supposed consciousness of guilt upon her mind, the prisoner would have dared to approach that dangerous subject? Or, if she did, that some strange emotion would not have attracted the notice of those to whom she was speaking, some wild or sinister expression of the countenance, a quivering lip, a pallor of the face, or some other ensign of guilt? And yet, with all the zeal of the State's witnesses (and God knows, in that they have not been wanting), not one of them discovered anything of the kind even with the aid of their heated imaginations.

But how does it stand with the theory of the State herself, that the prisoner was acting under the advice and guidance of that arch fiend, Mrs. Rising? Had she left her without the proper knowledge of what effects the arsenic would produce? Was it necessary for her to call in to her aid the profound knowledge of Mr. Smith, who tells us that red arsenic drives rats to the fire, and white arsenic drives them to the water? Did she seriously expect or desire any information from Mr. Smith, or was it only an accidental conversation, as they were taking their meal, merely, as is very often the case, when men have no subject of common interest to talk about, to relieve the awkwardness of a protracted silence? But did she then, or at any other time, show that knowledge of poisons and their effects which our book says is wont to mark the poisoner? Never.

Nor was anything of a poisonous nature ever traced to her possession, so as to justify the accusation of dabbling in poisons.

Another circumstance relates "to the purchase or possession of poison, at or about the time of the alleged crime, and the pretense under which it was procured and whether the pretense turns out to be true or false" (Dean 316). Let us examine this matter. She did purchase arsenic. But was it after the manner of one who meditated the destruction of a human being? Why should she have gone in person, in the open day? Could she not, if the hypothesis of the State were true, have procured it through the hands of Mrs. Rising, or some of her sub-agents, or through a negro, who could not testify against her? But she goes in person, and in the presence of a third person boldly asks the clerk for the article, saying that she wanted it to poison rats. This was her avowed purpose. Was it not the true purpose? Unwilling as Mr. Smith was, he was obliged to acknowledge that he had heard rats complained of in the house, and that the only time in which the prisoner is connected with arsenic, either by word or deed, she assigns the desire to destroy the rats as the cause of the connection. But it is enough for you that the prisoner *assigned* that as her reason for purchasing the arsenic; in common charity you are bound to believe it true, unless it be proved to be false.

And here permit me to remark, that not only has

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the State failed to convict the prisoner of falsehood in this particular, but in every other. Not one untruth has been caught upon her lips throughout this whole transaction. And if it be true that the prisoner is the black-hearted murderess they would have you to suppose, it is the only instance of which I have ever heard, that one guilty of a black and secret deed has, both before and after its occurrence, uttered no word of untruth to avert suspicion or conceal guilt.

But, gentlemen of the jury, if the prisoner had purchased that arsenic to destroy her husband, would she not have commanded the small sum of fifteen cents, the price that it cost, and bought it for cash, with the hope that it would have attracted no particular attention, and be soon forgotten? If guilt was in her heart, her folly was even greater than her guilt, for she directs it to be charged to her husband, as purchased by her, and has it recorded in indelible characters. And this, you are told, is the conduct of the wary dealer in poisons. Gentlemen, if your throats are sufficiently capacious to swallow such stuff as this, it will not much matter, so far as the interests of common sense are concerned, if, indeed, the wife of each one of you should poison you in a fortnight.

"The third moral fact arises out of the circumstances attending the administration of poison, either in food, drink, medicine, or otherwise" (Dean, 316). When, let me ask you, was the poison in

this case administered, if administered at all? The State alleges first, that it was given in the syllabub at dinner, in the presence of Smith and others. Let us examine this. Remember, gentlemen, it is not what a jealous mind may suspect, that a sober judgment should convict. A heated imagination can shape things that are not, and jealousy or suspicion is a green-eyed monster, which doth make the meat it feeds on. Was there any arsenic in the syllabub used on that day? Has it been examined, and its contents subjected to chemical analysis? No. Why, then, should any one say that there was poison in it? For no other reason in the world than that Mr. Smith fancies there was something remarkable in that no other member of that family was supplied with syllabub on that day, although he himself fully explains that fact, by telling us that every one present except Mr. and Mrs. Simpson were members of a society that prohibited them from the use of wine, an ingredient in the syllabub. Besides that, it is said Mrs. Simpson, there being but two glasses prepared, kindly yielded hers up to her husband at his request.

Do these circumstances even tend to satisfy any rational mind, that there was poison in that syllabub? But I will not stop at that. I will show you by the facts that it is utterly impossible that there could have been arsenic in it. It is laid down in the works on Medical Jurisprudence, that arsenic, the poison charged in this case, under ordinary circum-

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stances, usually manifests its operation between a half hour and an hour after being taken. Never longer than an hour, unless the patient goes to sleep soon after taking it. Often within the half hour, sometimes as soon as eight minutes, or within the time usually intervening between the first and second cup of tea, cocoa, coffee, or chocolate. Now the proof is that the syllabub was taken by Simpson from twelve to two o'clock, and as late as dusk in the evening he was walking about the street. If he had taken poison, even as late as three o'clock, his walking about at dusk without having passed through any paroxysm of illness, would be contrary to the experience of any toxicologist. For there is not only no proof that he did sleep, but there is, on the contrary, proof that he did not. Besides, it is in proof that he ate syllabub with a spoon. Is it not more than likely that in two glasses which it is proved he took, he would have discovered the unpleasant taste of the arsenic, or at least that he would not have been so much charmed with the taste of the first glass as to have desired the second? At any rate, according to all experience, the effects of the first glass would have manifested themselves while he was taking the second.

The second mode in which the State suggests that arsenic may have been administered, was on that same evening in the coffee. Now, the coffee is subject to most of the remarks applicable to the syllabub. There has been no discovery of any

poisonous ingredients in the residuum in the cup. All that the witness says, stripped of his mysterious manner, is, that the servant by mistake brought to him a cup, intended by the lady of the house for her husband, and that, in rather an excited tone of voice, she said, "I say, Mr. Smith, that is Mr. Simpson's cup." As in the case of the syllabub, the witness furnishes us with a complete solution of anything that needs explanation, in relation to the coffee. He tells us that he and others were workmen with Simpson, and boarded at his table; that there were sometimes two coffeepots, one containing stronger coffee than the other; that she generally helped herself out of this coffeepot, and sometimes shared it with Mr. Simpson, and with him only.

It is worthy of remark, if Mrs. Simpson had been really desirous of poisoning her husband, taking care at the same time to poison no one else, the two-coffeepot system would have afforded her the very finest opportunity, and it is a little unaccountable that she should have chosen that very occasion, when, as the State supposes, she meditated poisoning her husband, as the one to dispense with the two coffeepots.

But, Mr. Smith tells us that there was, by express agreement and understanding, a difference between the cup of coffee intended for Mr. Simpson and those given to the boarders; that Mr. Simpson liked his coffee sweeter, and it was so made; that, in consequence of this, frequent mistakes had arisen, to

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avoid which it was determined that Mr. Simpson's cup should be sent last, and Mr. Smith was to take the first; and that in conformity with that arrangement, he took, on the occasion spoken of, the first cup that came to hand, and he has no doubt that Mrs. Simpson at first in an undertone told him that he had taken the wrong cup, but that he was attending to the conversation of two other persons, and did not hear her, and that for that reason it was, as he supposes, that Mrs. Simpson spoke to him the second time in an excited manner. And does not that fully account for the circumstance? We trust it does, and rationally. Is there anything in Mrs. Simpson's forgetting on this occasion the arrangement of serving the boarders first and her husband last? Why, if she had designed effectually to secure a poisoned cup coming to Mr. Simpson, to the exclusion of any one else, the very plan would have been to reserve his cup for the last; and all the rest being supplied, his cup must of necessity have found its right destination.

But in the argument, it was rather faintly argued that Mr. Simpson complained after taking the first cup, and refused to take the second, and the impression was sought to be made; that the first cup of coffee had made him sick, and from thence to infer that it was poisoned. But remember it was proved that Mr. Simpson was a man of delicate constitution, and often complaining; and nothing that fell from the witness can connect his complaint of indisposi-

tion on that evening with the drinking of the coffee. His remark was, that he did not feel very well, and could not drink another cup; not that the first had made him sick. And the fact must have been so, for we do not find even the supposed symptoms of poisoning coming upon him for too long a time afterwards for poison to have been administered in the coffee? Dr. Mallett tells you, that as late as ten o'clock the next day, he did not consider Mr. Simpson seriously ill.

I think, then, as in the case of the syllabub, it is demonstrated, not only that there is no proof of arsenic being in the coffee, but the circumstances show that there could have been none. Will it be pretended that the arsenic was given at the time that Mr. Smith says she mixed up the pill with syrup? Why, Mr. Smith himself expressly negatives the presence of arsenic there, for he says the appearance was as of a pill broken up and beaten into a syrup. There were no white particles, such as are said to have been found in the stomach of the deceased, and, in fact, he represents the mixture to have been of a brown color. Besides that, after taking the pill the deceased was more easy, which tends to prove the total absence of arsenic, not only in the pill, but in any previous dose he may have taken.

When, then, if the prisoner poisoned the deceased, did she administer the dose? To this question the State replies, that she was his wife, and had constant access to her husband, and may have done it at some

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time when no one was at hand to see it. This is all true. But does not this very fact "plead trumpet-tongued against the deep damnation of his taking off"? Is it probable a woman would poison her husband? And does not the argument amount to saying to the prisoner, "We cannot prove your guilt, but you must prove your innocence"? Alas! by whom can she prove it? The only person who could do it, as the very argument assumes, is mingled with the dust. And if this mode of conviction be adopted, who can be safe?

The fourth moral fact spoken of in the books is "The intent of him who administered the poison." But where there is no proof of administration, the question of intent cannot arise.

The fifth moral fact spoken of in the books is the "simultaneous illness of other members of the family." But as this circumstance is altogether in the prisoner's favor, there being no such simultaneous illness of others, the State has framed her hypothesis upon the supposition that the prisoner was very careful to poison nobody but the deceased. As if such a murderess as they would have you suppose her to be, would be very anxious to avoid killing any one but the particular object of her malice.

The sixth moral circumstance to which authors refer is "suspicious conduct in the prisoner during the illness of the person poisoned. He may prevent medical advice being procured, relatives sent for. He may attempt to destroy food or drink, or vomited

matter, which may have contained the poison" (Dean 318). Try the prisoner by the rule, and how does her conduct contrast with that of a supposed transgressor? She is the first person to send for a physician, and, indeed, every one who approaches him, comes at her particular request; she invites many, she entreats them to stay with him. She frankly discloses to them every symptom of his disease with which she is acquainted, describing, as the physicians now say, the symptoms of poisoning. Voluntarily communicating that, which, supposing her guilty, was the very thing to destroy herself — keeping back nothing at all mitigating the character of his disease — making no effort to conceal any of the excretions from his body.

On one occasion, when, according to Mr. Smith, she had administered to him a pill, she deliberately examines, in the presence of Mr. Smith, what he throws up — calls Smith's attention to it, and expresses her satisfaction that he had not thrown up the pill. Had she believed that his stomach contained within it the evidence of guilty practices on her part, would she not have been afraid to have called the attention of Mr. Smith to what came from it, lest he might discover the arsenic? On this branch of moral evidence the prisoner's conduct is not only free from anything suspicious, but is singularly marked with the very badges of conscious innocence.

But the State, having failed in showing anything suspicious according to the past experience and

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sound theories of men, has brought to your attention a new sort of suspicious matter — that is, that the prisoner took counsel of a fortune teller and professed to believe in fortune telling; and among the foretold events placed the early death of her husband. The first, in point of time, on this subject, is the testimony of Miss Register, who says, among other things, that the prisoner told her, "That Mrs. Rising had told her her fortune, and that she had informed her that she was to live with her husband five years, and five only; and that three of them were already gone, and now she believed it." This was at a time when the prisoner was in much distress — when the future prospects of life looked gloomy before her. And who, gentlemen, when overtaken by great misfortune, has not turned with superstitious awe to some past circumstance as the forecast shadow of the sad event that has now overtaken him? Oh, what strange matter crowds itself upon the oppressed and desolate heart! The prisoner was bewailing in bitterness of spirit, at that moment, the dark cloud hanging over her earthly prospects, and, as the natural refuge from self-reproach, said to herself, and uttered aloud to her companion, "It is my destiny."

But was that destiny that her husband should die in three years? And could she have intended by her expression to prepare the mind of Miss Register, or any one else, for his immediate death? On the contrary, according to the prophecy as read to her,

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he had yet two years to live, and his immediate death would be quite as unaccountable as if there had been no prophecy at all. Nay, even more so, for Fate had promised him two years more; and if his life were then taken, it would not only violate the common course of nature, but the express promise of Fate herself.

But the State is very easily satisfied; anything will fit. If the shoe is six inches too long, oh, what an admirable fit! It could only be made for the foot that now has it on. If it be an inch too short, still it is a most comfortable shoe, and was evidently intended for the present wearer. Those who are determined to see coincidences can easily find them; and one who is predisposed to believe that a prophecy of death in five years had distinct reference to a death which takes place in three, will have little difficulty in adapting any facts to any theory.

Next comes the testimony of Mr. Smith, who heard the prisoner tell her husband — her husband, be it remembered, the man whose death she was compassing — that, “as he knew” (for it seems to have been nothing new to him) “that her fortune had been told her, and that they were to have two children, who were to die, that a third was to be born, and then he was to die.” If it was his death she was foreshadowing, and she really believed it was to happen, it was very benevolent in her to give him notice. For what purpose was this done? To put him on his guard, that he might elude his

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fate, or to warn him to make suitable preparations for the world to come? Is not this making mountains of molehills? The witness was told his fortune, too — was that fulfilled? It does not appear; but it is quite as much fulfilled as the one respecting her husband, for, according to that, he was to live to see another child born, which was to live; and yet, in despite of the prophecy, he dies before that child is born, and goes down to the grave hopeless of issue.

But a sort of magic effect is given to this scene at the supper table, which Mr. Smith described, because it occurred at the very last supper at which poor Simpson was present. And notwithstanding Mr. Smith tells us that he then considered it a mere jocular affair, in which Mr. Simpson joined, it is plain that to him and others subsequent events have given to it a strange and undue importance. Was she not in jest, poor simple-hearted girl? Without considering that there were those around her who were bottling up, as it were, every idle word that fell from her lips — every incautious act she might commit, susceptible of any bad interpretation, that they might there ferment and form, at some future time, a dangerous compound which might be poured upon her to the destruction of her life — she spoke and acted from the impulse of a guiltless heart. Like a lamb in its innocent gambols cropping the flowers on the margin of a stream, she knew not that at each meander of that stream, couched amid

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the flowers among which she sported, lay hid a venomous reptile, ready to inflict upon her its mortal sting.

But suppose she was serious in what she then said. Who knows but there may reside in those grounds of coffee some mysterious power? Wise as we think ourselves, short-sighted mortals that we are — we scarcely know what is, or what is not. And it may be, that in the arrangement of the grounds of coffee in that cup there was a dim foreshadowing of events to come. It was a most sad tale, poor thing, that she wove from the materials before her, such as they were. She saw not in that dim vista the youthful bridegroom, of whom so much has been said; she saw not for herself the bridal bower, nor the orange blossoms wreathed amid her hair; but she saw — and most sadly has it all been verified — she saw the husband of her love stretched upon a bed of sickness; she saw his coffin, and for herself a long, long, muddy road, leading her away and away to — God knows where, and skirted with murky clouds.

Next comes the testimony of Mrs. Ann Butler, the introduction of whom, if there were nothing else in this case, ought to satisfy you that this prosecution is not well founded. That the State should ransack the brothels and bawdy-houses of the villages to find such a witness, and that they should hold on to her, and press her testimony upon your consideration after her character has been so fully exposed, is a

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thing to be noted. If she is believed, they tell you the fate of the prisoner is sealed. And yet, judging her testimony so important, strongly assailed as she has been in the cross-examination, they do not offer to sustain her character. Why have they not done so? Because they well know that the attempt would be worse than fruitless.

The counsel for the State tell you she has admitted herself to be the mother of a bastard, and ask you, if for this, you will discard her testimony? Is this a fair statement of what she herself admitted? Did she say she was the mother of one? Was she not forced to confess herself the mother of a whole brood of bastards? She is not a repentant Magdalen who had once transgressed, and then turned and asked forgiveness. But with shameless perseverance she has offended times without number, and stands before you condemned from her own lips. Will you believe her, then?

But suppose her disposed to tell the truth. According to her statement, she overheard what the State says was a plot between Mrs. Rising and the prisoner against the life of the deceased. They either knew she was present, and so knowing, openly conversed upon the subject before her, whatever it might be; or, they did not know of her presence, and she was playing the eavesdropping upon them. If they knew of her presence they certainly were indifferent to her hearing what they said; and this must have proceeded either from consciousness that what

they were saying was innocent in itself, and they, therefore, cared not who heard it — or, they knew that she was equally base with themselves, and if so, but little reliance should be placed upon her by you, even if she had not been discredited by other proof.

But, suppose as a listener, she overheard what they said, how easily might she have misconceived the language! She says the prisoner was complaining to Mrs. Rising of the ill usage of the deceased, and that Mrs. Rising consoled her by saying, that “if the prisoner would do as she said, the deceased would not live over a week.” How easily might the words, “Do as I tell you and this will not last over a week,” be mistaken for what the witness says they were! This occurrence, if occurring at all, must have been during the quarrel spoken of by Miss Register; and we find that in less than a week the parties are reconciled; and, if Miss Register is right, the deceased must have lived about a month afterwards.

But what did Mrs. Rising tell her to do? Was it to poison Mr. Simpson then? She certainly did not poison him then, for it was more than a fortnight afterwards that she purchased the arsenic. But, did she tell her to poison him at any time? There is no evidence that she did; and, of all testimony against an accused, there is none so dangerous as that which deals merely in dark hints, leaving everything vague and uncertain, and allowing sug-

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gestions to be made to the imaginations of the jury how the blanks shall be filled up. He who enters a dark chamber where no ray of light finds entrance, will, if you excite his imagination but a little, see visions that the brightest noonday sun never revealed. This is the character of the testimony against the prisoner, and this constitutes the danger of her condition—a danger against which it behooves you to be on your guard. You are first asked, from mere dark hints, to suppose that Mrs. Rising told the prisoner to poison her husband, although no such words are used by the witness, and then, from thence to infer that she really did so.

Mystery has a strange power over the human heart. Poetry stirreth it more than plain prose, and the magic of poetry consists in the shadowy vagueness of its descriptions, in the dimness and indefiniteness of the outlines of its pictures. These, imagination loves to busy herself in completing, and will be certain to do so under some bias that she has received. But not only does the State ask you to draw such inferences from such meagre materials, but even endeavors to keep out of your view the important fact, that, after all, the state of things under which Mrs. Rising's supposed advice must have been given had passed away, and that peace and harmony had been restored between the parties some time before Mr. Simpson's death.

Next in the order of moral circumstances comes

“the suspicious conduct of the prisoner after the person’s death; as, hastening the funeral, preventing an inspection of the body, giving a false account of the previous illness, and other like circumstances” (Dean, 318). Did the prisoner hasten her husband’s funeral? Did she endeavor to prevent the inspection of the body? No, neither of these; on the contrary, the physician tells you that not only did she submit to external inspection, but evinced just as much and no more repugnance than an innocent woman would have evinced to a *post mortem* examination of the body.

The new-made widow is standing by the corpse of her deceased husband. The tears of grief are on her cheeks, and she is told, that the beloved form, over which she is standing, must be subjected to the hand of the anatomist; that the recesses of that bosom, once teeming with love for her, must be searched by the surgeon’s knife, and, like an ox at the shambles, his flesh and his bones must be cut asunder. What woman would not start at the proposal? Do you wonder if she yielded a reluctant accent? But she is calmly reasoned with by the intelligent physician, in whom she has confidence, and she finally yields to the force of reason, and meekly replies, “Well, if you and Dr. Robinson think it important, I cannot withhold my consent.” What woman, conscious of the guilty secret that that examination might reveal, would ever have consented? Would she not have clung with tenacity to that cold corpse, combated

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every argument that could be urged in favor of what she would have insisted was a wicked desecration of those sacred remains, and when all other arguments failed, have betaken herself to that most resistless of arguments — a woman's tears? But, in dignified sorrow, the prisoner consented — and the body was examined.

Did she give to any one any false accounts of his illness? Have we not already shown you with what frankness she spoke of it during its progress? Nor did she ever afterwards change or deny what she then said. /

But the State, failing in these indications of guilt, has again betaken herself to the mysterious, and brings up to you the conversation with Miss Arey. This lady tells you, with a frankness that does her credit, that she and the prisoner had been a little unfriendly; and yet we find the prisoner invites her to be with her husband in his last moments, well knowing that if there were even slight grounds of suspicion against her, the jealous eye of this witness would be apt to see them, and that she would in nothing extenuate the circumstances of guilt. But the worst that Miss Arey saw in the conduct of the prisoner was, that as they retired from the chamber of death, and got to the prisoner's own room, the prisoner's tears suddenly became staunch, and she told the witness "that her fortune, as it had been told to her by Mrs. Rising, was about to be realized — that some time ago she had told it to her; and that

within a week past she had carried her some sugar and coffee, and that she had then told her that Mr. Simpson would die in a week and she would marry the man she had first loved."

Gentlemen, I know not if any one of you has lost the wife of his bosom. If there be such a one, he need not be told of the overwhelming nature of such a bereavement. How the very eyeballs are seared and the moisture of the system dried up! How the heart is crushed, as it were, into bleeding fragments, and the brain smitten with astonishment that for a time throws reason from her throne! Lesser griefs may find utterance in tears; but a grief such as this often lies too deep for tears; and can only find vent in strange and incoherent language.

This poor young creature could no longer weep. According to the true course of nature, past scenes with him whom she had loved in life, now sleeping in death, are rushing upon her mind; and, almost her first thought is of some act of her own, in which her heart reproaches her with being less considerate of the feelings of the departed than she might have been, and she gives utterance to that thought by saying to the witness, "How little did I think, when Mrs. Rising was telling me my fortune, which I communicated, in my giddy thoughtlessness, to poor Alex, that this first act in the scene drawn was soon to come to pass!" This, I am instructed to say, is the truth of the case, though, by the unintentional omission of a few words, and the supply of others,

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in the memory of Miss Arey, the sense of the whole has been slightly changed. But, view it as you will, it amounts to very little.

The eighth class of moral facts, is "the personal circumstances and state of mind of the deceased, his deathbed declarations and other particulars" (Dean, 318). That is to say, whether there is anything from which to infer suicide, or whether his deathbed declarations point to anyone as the author of his death. I will not seriously insist, nor has it been seriously insisted by my associate counsel, that the deceased died by his own hand; but it is very certain that he did not charge any one else with having taken his life, and certainly not the prisoner. If she had been practising on his life, think you not that he would at least have suspected both the author and the means of his death? And yet, in the whole course of his suffering, he neither suggests the idea of his being poisoned, nor of the prisoner being concerned in its administration. How can you reconcile this with the supposed guilt of the prisoner?

The ninth moral circumstance, and perhaps the most important in the whole, is the motive that could have prompted to a deed so black. The State saw the importance of this, and has with great labor endeavored to find one. Those who act for the State well know that it would be impossible to make you believe that the prisoner had poisoned her own husband, unless they could supply a motive adequate to the production of such horrible consequences;

and, accordingly, they have suggested one which they have altogether failed to prove.

The State suggests that the prisoner, long before she saw the deceased had given her young affections to another — that friends interfered and prevented her union with the object of her choice — and that she consented to marry the deceased to obtain a home, a place of refuge from the inclement seasons, necessary food, and comfortable apparel; but, false to her marriage vow, she became an adulteress — that the jealousy of her husband was aroused, and he threatened to dissolve the connection between them — that hatred and ill will sprang up between them — and that, at the very moment of his death, the deceased and the prisoner were on unfriendly terms. And to all this was added a desire to remove an impediment to her union with the object of her first love.

It is certainly true, that this picture is very darkly charged; but, when we examine its various features, they will fade away, one by one, and scarcely any color will be left on the canvas. Grant it to be true that the prisoner had once loved another, but had been disappointed in her hope of marrying him, and even that the embers of that love were still glowing beneath the ashes that had been cast upon them. Nay, even admit that they sometimes, when blown upon by the breath of that lover, blazed up a little too intensely. Where is the woman that has married the man on whom, in her schoolgirl days, she first

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fixed her affections? And because she afterwards marries another, does it follow that she must prove faithless to his bed, and poison him to death? If such be the case, there are few husbands indeed that are safe, and it is high time that hanging were practised on an extensive scale to afford any hope of preventing their destruction.

But that the prisoner was ever unchaste, where is the proof? From all this populous town has a single witness been brought forward who ever saw in her an unchaste look, ever heard from her an unbecoming word, or ever witnessed in her even an indiscreet act? It is true Miss Register tells us that, on a certain occasion she entered a room with her, and having locked the door, produced a note from which she read, purporting to be from her husband — "I thought you loved me once, but now I have reason to think you love another better." He then goes on to say, "You can no longer be my wife, but for the sake of your friends I will not separate from you, but you must prepare a bed for me upstairs. I will furnish you with victuals, but you must find your own clothes."

Does this prove her guilty of adultery? By no means. Doubtless some busy Iago is at the bottom of this affair. And this is proven by what she tells Miss Register about it the next day, "that somebody had been telling him some news that had made him angry."

But does she herself plead guilty to this charge?

No. She is taking counsel of Miss Register. She tells her this is their first disagreement. "Shall I," says she, "when he comes in, go up to him and kiss him, and see if he will speak to me?" How like the kind, noble, generous, forgiving woman! Though herself the offended party, how does she propose to act? Not to demand an apology but to ask forgiveness. Like the humble chamomile, though trodden under foot, she rises up beneath that tread, a fragrant and healing balm to him who has oppressed her.

Yes, the heart of a woman is a wellspring of kindness. It sends forth its streams over this parched and withered earth, and causes it to bud and blossom and put forth the fruit of good works. Woman is by far the better portion of our race, and if our sex were only like her, different, far different would be the condition of the world. "Or shall I," she meekly inquires, "do as he bids me, like an obedient wife, and prepare a bed for him upstairs or must I take no notice of this note, and act as if I had never received it?" What aid Miss Register afforded her in this her perplexity does not appear, and here for the present the curtain falls.

But the next morning, when probably her overtures of kindness had been rejected and some new indignity offered her, the blow given perhaps, spoken of by some of the witnesses, she takes higher ground. And when Miss Register tells her she had better have no more to do with the object of her husband's

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jealousy, she replies, "It is not worth Mr. Simpson's while to turn a fool now; —— has been visiting me ever since we were married, and Mr. Simpson need not make a fuss now." And when reminded by Miss Register that perhaps Mr. Simpson might murder ——, she replied, "Oh, he knows better."

Is this the conduct or language of a hardened guilty woman, conscious of adultery, and meditating murder? Is it not rather that of one maintaining her integrity? Mr. Simpson need not turn a fool now! Would he be a fool to object to the visits of a man whose intercourse with his wife he believed to be unlawful? If the prisoner were ever so wicked she would not believe this folly. She meant to say, "This gentleman has visited at our house ever since our marriage, nothing improper has ever occurred between us, and it is foolish in Mr. Simpson now to believe that there has, or will." And when she says that Mr. Simpson knew better than to kill ——, she but manifests her just sense of the binding force of the law, "Thou shalt not kill," and, at the same time, her belief that Mr. Simpson had too much sense to be unmindful of it. Had she been conscious of any idea of murder in her own mind, she would have been more ready to conceive its possibility in others.

The next day Miss Register finds her packing up her clothes, and the piteous outpourings of her then almost broken heart are gathered up against her. How natural the mode adopted by her of bewailing her condition! "My fortune has been told me," said

she, "and I was only to live with Mr. Simpson five years; three of them have passed away, and now I believe it." Why did she believe it *now*? She had not believed it before, for her heart had rejoiced in the love of her husband; and, like all happy creatures, she had not believed that this happiness could ever pass away. But now that a dark, dark cloud had come between the sun and her, she feared that that cloud for the next two years would grow darker and thicker, and an endless night of misery would close in upon her. This was what she meant, and this only. That husband, whose tenderness she had before experienced, and in which she had confided, had charged her with infidelity, perhaps had struck her. All this had happened within the first three years of their marriage; what had she to look for during the time to come? Well might she anticipate an early dissolution of bonds that had been so rudely tried. If she meant that that dissolution would be by death, she did not say so; and it is but conjecture to assume that she did.

A few days more, however, and she is again in the house of her husband, and she tells Miss Register that they have settled all their difficulties. And thus had the deceased and the prisoner passed through a scene, rough it is true, but not more so than is encountered by thousands of couples, the general tenor of whose life is peace, love and happiness. And, for aught that appears, love and confidence were permanently restored between the prisoner and

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the deceased. The inmates of the house speak not of a ripple on the quietness of their domestic scene. They were affectionate and kind to each other, and, according to Mr. Smith, even in the memorable conversation at their last supper, she calls him "Lovey," a term of endearment that she frequently used to him, and, for aught that appears, in perfect sincerity. At any rate, it was well received by him, which would not have been the case had he believed her false and deceitful. Would he, had he not been satisfied of her innocence, have taken her to his embraces? But further, in this conversation with Miss Register, it seems to me Miss Register is placed in this dilemma: Either these conversations took place in the innocence of the prisoner's heart, or she knew Miss Register to be no better than she should be, and therefore a fit repository for her guilty secrets. Their intercourse was of but three months' standing, and yet we are asked to believe that, with the impression that Miss Register is a good and virtuous woman, the prisoner makes her the confidant of her amours. If Miss Register be a good woman the prisoner intended no evil in what she communicated to her; if she be a bad woman, she is not entitled to your confidence.

But, according to Dr. Mallett, it is said, that on one occasion, when the deceased was suffering greatly with nausea, the prisoner, who had watched over him with the tenderest care, laid her hand gently on his head, and that he turned pettishly

away; on which she remarked, "touch-me-not to-night," or something of the sort. This is all the doctor discovered to attract attention; and I wonder that he should have thought that worthy of note — he, who knows so well how, in seasickness and other cases of nausea, the sufferer is incapacitated for every enjoyment, and desires nothing so much as to die unmolested. The most affectionate wife or husband that ever lived, under such circumstances, would turn away the head and give utterance to expressions of petulance.

And a like occurrence was witnessed by Miss Arey. But she, it appears, when she came in, found the prisoner seated on the side of the bed by her sick husband, weeping and bending over him, and to all appearance, doing all she could for his relief. And as proof that he looked upon her as a friend, he implored her, among others, to do something for his relief, as he had done before in the presence of Mr. Smith. She did all she could. She gave him medicine, and expressed her satisfaction when she found that he had not thrown it up. So far, then, from there being any malice on the part of the prisoner towards her husband at the time of his death, their differences, which had been slight, had been entirely reconciled, which sweeps away every motive for the commission of the deed. And besides, if the life of Simpson was ever important to her, as affording her a home and the comforts of life, it had not ceased to be so; and so far, then, from the death of the de-

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ceased being desirable to the prisoner, his life was, to all appearance, of the utmost importance. And so far from there being any signs of unkindness between them, she was his constant, kind and attentive nurse through all his sickness, and scarcely left him but with life itself. From her hand he took, without suspicion, the medicine she prepared, and when he spoke of dying, she affectionately bent over him and entreated him "Not to talk so" — not to despond, and thus render his condition more dangerous — not to fill her with despair, by his gloomy forebodings. What, then, becomes of the proof of malice, and this evidence of guilt?

Another one of the moral circumstances relied on in the books, is the declarations of intention. Nothing of this kind was ever heard from the prisoner, although something in the nature of threats is ascribed to her in the various conversations which have already been remarked upon.

The eleventh, twelfth, and thirteenth classes of moral facts, to wit, "unexplained appearances of suspicion, and attempts falsely to account for them; the suppression or destruction of evidence; and the simulation of facts," are entirely wanting in this case, and by their absence show that the prisoner was under no necessity to resort to them. This furnishes what may be called negative evidence in the prisoner's behalf.

I have thus, gentlemen, reviewed all the facts and arguments relied upon by the State, and suggested

some occurring to my mind in behalf of the prisoner. I fear I have been tedious. But the prisoner has, in part, committed to me her cause, and thereby, to some extent, entrusted her life and character in my hands. I have felt anxious that nothing should be left undone by me, to save that precious life, and to place her innocence clearly before you. She is beset by circumstances of suspicion, not of guilt. These may endanger her, and I look upon her, and fancy my own daughter pursued by a band of cruel and relentless enemies, and I feel as if I could throw my arms about her, and exclaim, "God help thee, poor innocent, they shall not hurt thee, but at the sacrifice of my life."

I beg you, gentlemen, also, that you may be able to do her justice, to fancy her your own daughter and ask yourselves what you would think of a jury, who, under like circumstances, should find her guilty? Are there not rational doubts of the deceased having died of poison? And is it not even still more doubtful that the prisoner administered it? If any of you have gone into that box with your minds made up against the prisoner, determined to convict her, right or wrong, let me ask you to pause a moment and reflect. I cannot believe that there are any such; but if there be, remember that the eye of God is upon you, and from Him you cannot conceal your guilty purpose; and if, upon grounds such as these, you convict the prisoner, you will be a murderer, more deliberate and cruel than she, even

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if she be guilty. And if some of you should, upon the evidence, come to the conclusion that the prisoner is guilty, without any rational doubt in your minds, still if other members of the jury should entertain these doubts, and you cannot overcome them, it is your duty to yield to them, as I will convince you by a passage from the opinion of our Supreme Court, in the Ephraim case. In speaking of the necessity to discharge a jury in a capital case because they cannot agree, His Honor, Chief Justice Ruffin, remarks:

“The power is not necessary or useful to public justice; for if twelve men, indifferently chosen, after full argument upon the evidence and instruction from the Court upon the law, and opportunity for full deliberation, be not agreed of the guilt of the accused, he ought to be acquitted. The law anticipates a verdict in every case; and although, from the constitution of the human mind, it cannot be supposed that the evidence will make the same impression upon every juror, yet it is probable, by consultation, they will ultimately come to the same conclusion; if to no other, that the whole jury, upon the fair and invincible doubts of some part of their body, will adopt one favorable to the prisoner, since in a case of real doubt, the law leans to the presumption of innocence.”

Thus, therefore, as I have said, if any of the jury entertain honest and invincible doubts, we have the highest authority for saying, that it is the duty of the whole jury to adopt those doubts, and acquit the prisoner. And to such of the jury as may have

come to the conclusion that the prisoner is innocent, or entertain doubt of her guilt, I would say, let not any fear of inconvenience from a long confinement — any desire to return to your homes — any longing after food or drink, induce you to yield to the conviction of others, and give up your own and thus literally barter away the life of this poor young creature for a piece of bread, but rather, with a firmness which the occasion warrants, die in her defense.

Gentlemen, if the prisoner has perpetrated the acts charged upon her, we have a law, and by that law she ought to die. And although, by reason of the tenderness of her age and sex, we could not withhold our tears for her fate, we should feel that she had forfeited all claims to our sympathy and justly merited her doom. But it is the acts that we contest, and that you have to decide.

An allusion has been made to that figure of justice above the judge's seat, and you have been told that you are to decide, as the one or the other of these scales preponderate. We do not so read the law. It is not a mere preponderance of testimony that will justify a verdict of guilty, when human life is the issue. It must be clear, decided and complete. When there is but a slight preponderance, you must suffer mercy to drop in a tear in favor of the prisoner, and restore the equilibrium.

Gentlemen, into your hands we commit the prisoner. It is a precious deposit. I speak not of

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her fair body only, though that is much: but it bears within it a pearl of immortal price, for the purchase of which God Himself poured out His blood. Deal with it accordingly. There she lies before you, almost lifeless, awaiting her doom. She hath no voice to give utterance to her entreaties, not for her life only, but for her good name, dearer than life — dear, not only to her, but to the many with whom she is connected. But, through us, her counsel, she is permitted to speak and we pray you, gentlemen, deal with her in mercy. And once more committing the prisoner to your hands, we conclude in the language of the law — “and may God send her a good deliverance.”

The case went to the jury at three o'clock in the morning. Three hours later the verdict was read, finding the defendant not guilty.

The Munn Conspiracy Case

THE trial of Daniel W. Munn took place in the United States District Court, at Chicago, Ill., in May, 1876.

Munn was Deputy Supervisor of Internal Revenue and was indicted under Section 5440 of the Revised Statutes of the United States, being charged with what is sometimes referred to as "grafting," the Government contending that he had conspired with certain others to "sell protection" to a number of whiskey distillers, thus defrauding the Federal Government of large sums of money to which it was entitled as revenue under the laws as then existing.

Among the counsel representing Munn was Robert G. Ingersoll, whose place in history as lawyer and orator is secure. His speech follows.

Speech of Colonel Ingersoll

IF THE COURT PLEASE AND THE GENTLEMEN OF THE JURY:

OUT of an abundance of caution and, as it were, an extravagance of prudence, I propose to make a few remarks to you in this case. The evi-

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dence has been gone over by my associates, and arguments have been submitted to you which, in my judgment, are perfectly convincing as far as the innocence of this defendant is concerned.

I am aware, however, that there is a prejudice against a case of this character. I am aware that there is a prejudice against any man engaged in the manufacture of alcohol. I know there is a prejudice against a case of this kind; and there is a very good reason for it. I believe to a certain degree with the district attorney in this case, who has said that every man who makes whiskey is demoralized. I believe, gentlemen, to a certain degree it demoralizes those who make it, those who sell it, and those who drink it. I believe from the time it issues from the coiled and poisonous worm of the distillery, until it empties into the hell of crime, dishonor and death, that it demoralizes everybody that touches it. I do not believe anybody can contemplate the subject without becoming prejudiced against this liquid crime. All we have to do, gentlemen, is to think of the wrecks upon either bank of the stream of death; of the suicides; of the insanity; of the poverty; of the ignorance; of the distress; of the little children tugging at the faded dresses of weeping and despairing wives, asking for bread; of the men of genius it has wrecked; the millions struggling with imaginary serpents produced by this devilish thing.

And when you think of the jails, of the almshouses, of the asylums, of the prisons, of the scaf-

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folds upon either bank, I do not wonder that every thoughtful man is prejudiced against the damned stuff called alcohol. And I know that we, to a certain degree, have to fight that prejudice in this case; and so I say, for this reason among others, I deem it proper that I should submit to you, gentlemen, the ideas that occur to my mind upon this subject.

It may be proper for me to say here that I thank you, one and all, for the patience you have shown during this trial. You have given your attention, I believe, to every word that has fallen from the lips of these witnesses, and for one I am grateful to you for it.

Now, gentlemen, understanding that there is this prejudice, knowing at the time the case commenced that it existed, I asked each of you if there was any prejudice in your minds which in your judgment would prevent your giving a fair and candid verdict in this case, and you all, honestly, I know, replied that there was not. The District Attorney, Judge Bangs, stated to you in the opening of the case, for the purpose of preparing your minds for the examination of this testimony, that you must, first of all, divest your minds of sympathy. I do not say that, gentlemen; neither would I say it were I the attorney of the Government of the United States; but I do say this: divest yourselves of prejudice if you have it; do not divest yourselves of sympathy.

What is the great distinguishing characteristic of

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man? What is it that distinguishes you and me from the lower animals — from the beasts? More, I say, than anything else, human sympathy. Were it not for sympathy, gentlemen, the idea of justice never would have entered the human brain. This thing called sympathy is the mother of justice, and although justice has been painted blind, never has she been represented as *heartless* until so represented by the district attorney in this case. I tell you there is no more sacred, no more holy, and no purer thing than what you and I call sympathy; and the man who is unsympathetic is not a man. The white breast of the lily is filthy as compared to the human heart perfumed with love and sympathy. I do not want you to divest yourselves of sympathy, neither do I want you to try the case upon sympathy, but I want you sympathetic enough to put yourselves honestly in the place of this defendant.

Now, there is but one chief point in this case and that is, has Jacob Rehm told the truth? The other points that are raised are valuable only as they cast a certain amount of suspicion upon the defendant, but the real point is, and the attorneys for the Government know it, is Jacob Rehm's story worthy of credit? Judge Bangs felt that was the only question, and for that reason, in advance, he defended the reputation of Jacob Rehm for truth and veracity; and he made to the jury this remarkable statement: "The reputation of Jacob Rehm for truth and veracity is good; it spreads all over the city of

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Chicago like sunlight." That was the statement made by the district attorney of the United States. I do not believe that he would swear to that part of his speech. It was an insult to this court and this jury; it was an insult to the intelligence of every bystander, to say that the reputation of Jacob Rehm spread like sunlight all over the city of Chicago! My God! what kind of sunlight do you mean? Think of it!

Now then, gentlemen, he knew it was necessary to defend the character of Mr. Rehm; he knew that the testimony of Mr. Rehm was the only nail upon which the jury could possibly hang a verdict of guilty in this case.

And I propose to examine a little the testimony of Mr. Jacob Rehm. I believe it was stated by Judge Bangs that one of the best tests of truth was that a lie was at war with all the facts in the universe, and that every fact standing, as it were, on guard, was a member of the police of the universe to arrest all lies.

Let me state another truth. Every fact in the universe will fit every other fact in the universe. A lie never did, never will, fit anything but another lie made to fit it. Never, never! A lie is unnatural. A lie, in the nature of things, is a monstrosity. A lie is no part of the great circle, including the universe within its grasp. To examine the testimony of a witness, you examine into its naturalness, into its probability. We have no way to judge other people

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except by our own experience and an authenticated record of the experience of others; consequently, when a man is telling a story, you have to apply to it the test of your own experience, and the recorded tests of other honest men.

Now, let us suppose just for a moment that the testimony of Mr. Jacob Rehm is true. Let us suppose it. According to his testimony he first tried to stop this stealing. Nobody offered him any money to stop it, but he simply went to the collector, Irwin, and said they were stealing, and that it must be stopped; and thereupon Collector Irwin changed the gauges for the purpose of stopping the stealing. A few days thereafter, somebody came to him and wanted the stealing to commence, and he told them they would have to pay for it, and the amount they would have to pay for it, and he then went to Collector Irwin, whom he supposed at that time to be a perfectly honest and upright man, and told him, in short, that they wanted to steal, and would give five hundred dollars a month. Irwin said, "Go ahead."

He admits that they did steal. He admits that they made a bargain with him. He admits that that happened and he assigned all these gaugers and storekeepers. He admits that he did that for two years. He admits that he received at least one hundred and twenty thousand dollars of this money. He admits that in order to carry out this scheme he knew that every distiller would have to sign a lie

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every time he made a report to the Government. He admits that he knew every gauger would have to swear a lie at the end of every month in his report of the transactions of each day. He admits that every storekeeper would be guilty of perjury every time he made a report. He admits that he knew he was committing daily for two years a penitentiary offense. He admits that he put himself in the power of all these gaugers and all these storekeepers, and all these distillers and rectifiers, put it in their power to have him arrested at any moment during the whole two years, and yet he tells you he did this absolutely for nothing; that all he received he divided and paid over; that he never kept a solitary dollar, except it may be for a box of cigars. Let the attorney for the Government tell this jury that he believes that story! It is not, cannot, be true.

Then, gentlemen, why did he tell you that story? He told you that in an effort to convince you that he was worthy of credit here. He told you that he did not keep a dollar simply to make a reputation with you. What did he want a reputation with you for? So that he would be believed. And what did he want to be believed for? So that he could send Munn to the penitentiary, and, as the price of Munn's incarceration, get his own liberty. That is the reason he swore it, and there is no other reason in the world. Is it probable a man would commit all these crimes for nothing? Is it possible that he would hire and bribe other men to commit these

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crimes for nothing? I ask your common sense; I appeal to your brain. Why, gentlemen, if his statement is true, he is the most disinterested villain, the most self-sacrificing and self-denying thief of which the history of the world gives any record. Is it possible?

Is it possible, I say, that a man would make himself the sewer of all the official rot in this city, in which was deposited the excrement of frauds? Is it possible he would turn himself into a scavenger cart into which should be thrown all the moral offal of the city of Chicago without pay? No sane man has a mind so constructed that it can lodge an affirmative answer to that question within its brain.

What next? He tells you that Munn was in this plot; and that he, Rehm, at the same time was selling protection to these distillers. No distillers — and you know it — would have given him ten dollars a barrel unless they expected protection. He then was engaged in the sale of protection, was he not? Did you ever know of a vender crying down his own wares? Did you ever hear of a merchant crying down the quality of the cloth he wished to sell? Did you ever hear of a grocery man endeavoring to cry down that which he wished you to buy?

Jacob Rehm was selling protection at ten dollars a barrel. Was it not natural for him to endeavor to convince distillers that he had plenty of protection to sell? Was it not natural for him to say to them, "If you will give me ten dollars a barrel you will

have perfect protection"? Would it be natural for him to say, "I will protect you for ten dollars a barrel, and yet I have none of the officers in my pay"? They would say, "What kind of protection have you got, sir?" Would it not be natural for him to say, "I have got all these officers on my side from the lowest gauger to the gentleman who presides over the internal revenue department at the city of Washington"?

If Mr. Munn was in it, and if Mr. Munn at that time was the superior officer of the collector, and this man had protection to sell, would he not have said that Munn was also in the ring? When he was trying to sell protection to George Burrows at ten dollars a barrel, George Burrows asked him if Munn was in the ring and he said he was not. If Mr. Munn had been why didn't he say that Munn was? That would make his protection appear to be of a better quality and he could have sold it at a better price. But he said no, and that they did not need him, because they could manage him, and fool him through this man Bridges, and you will recollect that Bridges was appointed directly by the Government and not by Munn; and Bridges reported directly to the Government and not to Munn. He had nothing to do with him one way or the other, except that they were both in the Revenue Department.

Now, gentlemen, why should Rehm inform Burrows and other distillers that Munn was about to

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make a visit here? In order that they might have an opportunity to have their houses put in order. It may be that the counsel for the Government will say, "This shows the infinite fidelity of this infinite rascal."

Now, he says he paid this money to Bridges. You must recollect, according to his story, that Munn at that time was one of the conspirators, had been receiving money — a half of thirty-five thousand dollars or forty-five thousand dollars having gone into his pocket. Recollect that. He goes over one day to the rectifying house of Roelle & Junker, and there are some barrels found, the stamps of which had not been scratched. Mr. Munn was assured by Roelle that there was no fraud. Roelle still swears that there was no fraud. He was afterwards assured by Junker that there was no fraud. Junker still swears that there was no fraud. Now, what does Rehm come in to swear? Rehm says that Bridges came to him and told him that Munn was going to make trouble about these barrels that had the stamps on that were not scratched off. Why did not Rehm say to him, "How is he going to make a fuss? He has got twenty thousand dollars of money already. He is in the conspiracy. He is a nice man to make a fuss! What is he going to make a fuss about?" Would it not have been just as likely that Bridges should have made a fuss as that Munn should have made it? Bridges, according to the testimony of this immaculate witness, was in this

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no more than Munn — not one particle. And why was Munn going to make trouble? Mr. Rehm has endeavored to answer that question. Mr. Rehm then goes to Munn, sent there by Bridges, and says: "You are going to make some trouble about what you found at Roelle and Junker's?"

"Yes."

"Why?"

"Because the men at work there — the persons employed there — will make a fuss about it, but they will see it and say that it is overlooked."

Now, that is the reason that Rehm puts in the mouth of the defendant. Afterwards he goes himself to Junker and advises him to give five hundred dollars, and Junker proposes one thousand dollars, and gives him one thousand dollars, and then he sends for Munn and he comes to his office, and he hands him one thousand dollars.

Now, gentlemen, the reason Munn gave was that the men there would notice it and make a disturbance about it. Well, then, why not pay the men? Why not pay Bridges? Why pay Munn? If it was for the purpose of stopping the men from making trouble, why not pay it to the men they wished to stop? What men were in danger of making this trouble? Was it the gauger who received six hundred dollars a month for being a liar and a thief? Was it the bookkeeper who swore falsely in every report he made? Was there any danger of these liars and of these thieves making a fuss on their own

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account? Was there any danger of that gauger stopping his own pay? Was there any danger of that bookkeeper trying to throw himself out of employment? Was there any danger of any thief or of any conspirator saying anything calculated to bring this rascality to the surface? If a bribed gauger would not tell it; if a bribed bookkeeper would not tell it, I ask the attorney general for the Government, would Munn tell it, who had received, according to your evidence, over twenty thousand dollars of fraudulent money? Was there any danger of Munn turning State's evidence against himself? Was there not just as much danger of Bridges making a fuss as Munn? Was there not, according to their testimony, the same danger of Rehm himself going to Washington as there would be of a bribed gauger, and of a lying bookkeeper? Gentlemen, your story won't hang together. There is no philosophy in it, and it will not fit anything except another lie made on purpose to fit it; and it has got to be made by a better mechanic than Jacob Rehm.

Now then, gentlemen, what more? The district attorney told you that the testimony of Jacob Rehm was not impeached; that, on the contrary, it was sustained by these other witnesses. I was astonished. Had he made such a statement under oath I am afraid an indictment for perjury would lie. He said that Rehm's testimony had been corroborated rather than impeached. Let us see.

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"Mr. Rehm, did you ever give Mr. Burrows notice that Mr. Munn was coming in order that he might put his house in order?" "No."

"Mr. Burrows, did Mr. Rehm ever give you such notice?" "Yes."

What remarkable corroboration is here seen.

"Mr. Rehm, did you tell Mr. Hesing that Munn was not in it?" "I did not."

"Mr. Hesing, did Mr. Rehm tell you that Munn was not in it?" "He did."

That is another instance of the attorney's idea of corroboration.

"Mr. Rehm, did you tell Mr. Hesing that Hoyt was innocent?" "I did not."

"Mr. Hesing, did Mr. Rehm tell you that Hoyt was innocent?" "He did."

Another corroboration.

"Mr. Rehm, did you tell Mr. Hesing that Munn never was in it — that Munn was innocent?" "No."

"Mr. Hesing, did he tell you?" "He did."

Another idea, I suppose, of corroboration.

"Mr. Rehm, how much money did the house of Dickenson & Leach give you?" "Twenty-five thousand dollars."

"Will you swear they did not give you thirty?" "I will."

Mr. Leach on the stand:

"How much money did your house give Rehm?" "Between forty thousand and fifty thousand dollars."

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Another instance of corroboration.

"Mr. Rehm, did Mr. Abel ever give you any money?"
"Yes, sir."

"How much?" "Five hundred dollars."

"Will you swear it was not a thousand?" "Yes."

Mr. Abel takes the stand.

"Did you ever pay Jacob Rehm any money?" "Yes."
"How much?" "Two thousand dollars."

When a man is thus corroborated, gentlemen, his reputation for truth and veracity "spreads like sunlight all over the city of Chicago." There was not a solitary statement made by Mr. Rehm except it was made in the presence of Bridges, who is in Canada; of Irwin, who is in his grave, or in the presence of the defendant, who stands here with his mouth closed, that has not been contradicted.

If there is an infamous crime in the world, it is the crime of perjury. It clothes itself in the shining vestments of an oath in order that it may tell a lie. Perjury poisons the wells of truth, the sources of justice. Perjury leaps from the hedges of circumstance, from the walls of fact, to assassinate innocence. What can it not do? Perjury can change the common air that we breathe into the axe of an executioner. Perjury can forge manacles for free hands. Perjury out of a single word can make a hangman's rope and noose. It can build a scaffold upon which the great and noble must suffer.

It is said that in the time of the Inquisition, the inquisitors had a statue of the Virgin Mary, and when a man was brave enough to think his own thoughts he was brought before this tribunal and before this beautiful statue, robed in gorgeous robes and decked with jewels, and as punishment he was made to embrace it. The inquisitor touched a hidden spring; the arms of the statue clutched the victim and drew him to a breast filled with daggers. Such, gentlemen, is perjury, and if you take into consideration the evidence of this witness you, in my judgment, will commit an outrage. Every man should spurn that man from the threshold of his conscience as he would a rabid cur from the threshold of his house.

Is there any safety in human society if juries accept the testimony of such men? Is there any safety in living among mankind if this is the law, if the statement of a confessed conspirator makes the character of a great and good man worthless? Better that we should flee to the woods and live with wild beasts and savage nature.

Gentlemen, I know that you will pay no attention to that kind of testimony. You know that man is swearing a lie for the purpose of protection. You know that he is swearing a lie under the smiles of the Government of the United States. He expects a benefit from it. You know it. Burrows and Hesing, however, are swearing beneath a frown; they know that no mercy will be extended to them

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by the attorneys that they have offended. Understand that, and you will know how to render justice.

The defendant, gentlemen, was an officer of revenue for several years. When he came to Chicago, in 1871, the district attorney said the distillers were here in full blast making illicit whiskey. If he had read the evidence he knew better; if he had not, he had no business to make any statement about it. In 1871, when the defendant came here, according to the testimony of all these men the distillers were running straight, and the rascality did not commence until the fall of 1872, when Jacob Rehm sold protection. The defendant had been here a year before any frauds were committed. He was then supervisor of internal revenue up to May, 1875. During that time he did many official acts; he wrote hundreds and thousands of letters; he made hundreds and hundreds of visits to all these establishments. They have searched the records; they have had every nook and cranny looked at by a hired detective, and all that they can possibly bring forward is the beggarly account presented in this case: first, that there were four or five barrels of rum without the ten-cent stamps, twenty-five barrels of which the stamps had not been scratched, but about which there was no fraud.

Ought a man to be sent to the penitentiary because he does not seize a house when there has been a technical violation without any fraud? A super-

visor that will do it ought to be kicked out of office, and out of the society of honest men, and if this defendant was satisfied from the story of Roelle and Junker that there had been no fraud committed by leaving stamps on the twenty-five barrels unscratched, and had seized that house, that would have been an act of meanness, an act of oppression, which I do not believe even a Government attorney would uphold unless he was hired in the case.

Now, what next did he do? He went to Golsen and Eastman. Gentlemen, I do not care to speak much of Golsen. If there ever was a man utterly devoid of such a thing as principle, if there ever was a man that would read the statute against stealing, and stand in perfect amazement that anybody ever thought of making such a statute, it certainly must be Golsen. You heard him, and he is the man that said he told lies in business; he is the man that said he did not think it was wrong to swear lies in business, and his principal business now is to keep out of the penitentiary; that is one of the gentlemen they have brought forward here to offend the nostrils of decent men.

Now, then, he went to Golsen & Eastman. Judge Bangs told you in his speech that Golsen swore he then and there explained his infamy to Munn.

I recollect the evidence of Golsen so perfectly. I recollected it so clearly that it shocked me when Judge Bangs made that statement. Why, I never heard of such evidence. It was said by Mr. Ayer

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in the opening that in the presence of Munn, Golsen said to Bridges, "It is not now all right, but I can make it right," or that he said in the presence of Munn and Bridges, something that should have put Munn on his guard. I heard that, and I heard Golsen, when he came on the stand, say that he said that to Bridges, and you will bear me out when I say that I asked him in his cross-examination, if Munn heard it, and he did not pretend any such thing. I was hurt when Judge Bangs made the statement. I have an interest in this case. I am not only an attorney here but, gentlemen, I am proud to say I am the defendant's friend, and I ask for my friend and client fairness and justice. Golsen did not swear that he explained his villainy to Munn. On the contrary, he simply said he told this to Bridges, not to Munn, and that Munn did not hear it.

What more? Col. Eastman was there at the same time. Col. Eastman says he did everything he could to impress upon Mr. Munn that it was an honest transaction. Then he went through the rectifying house like an honest man. Did he act like somebody trying to cover up a fraud? No, and I tell you up to that time Mr. Eastman had borne a good reputation—a good character in the State of Illinois. Munn believed what he said. He believed there had been an accident. Munn believed they made the charges in the books, not for the purpose of covering up a fraud, but for the pur-

pose of making the books agree with the facts. So much for that.

If the defendant were upon trial for failing to make a report; if he were on trial for malfeasance or nonfeasance or negligence as an officer, it would be proper to bring all these things before this jury, but that is not the case. He is here charged with entering into a conspiracy to defraud the Government, and these things that they have shown outside — and it is perfectly amazing to me that a man could be in that position the years he was without making more mistakes — I say, all they prove in the world is (give them their very worst construction) that he was guilty of some negligence as an officer, but they do not attempt to prove that he was in a conspiracy with Mr. Jacob Rehm to steal.

The next point, gentlemen, to which I wish to call your attention is the testimony of Mr. Rehm before the grand jury. You recollect when we put Mr. Ward on the stand to show what Rehm testified to before the grand jury, that Mr. Ayer suggested that we had better have the notes. I saw then that he was extremely anxious for Schlichter to get on the stand. Then we introduced Mr. Oleson, and he still spoke about having the notes. I understood that it was a part of his case to have Schlichter brought on the stand in some way. Now then, while I think Schlichter swore to the truth, it does not make any difference to me whether he did or not. Not a particle. But if he did swear a lie, and he will

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swear a lie every chance he gets, in the course of time he will get such a character and such a reputation that a district attorney of the United States will stand up and say: "Schlichter's reputation is good; it spreads like sunlight all over the city of Chicago."

Rehm says he burned his books about the first of May for no earthly object except to get them out of the way. He swears though that he sold to nearly all these distillers malt, and he knew that the amount of malt sold to them would determine approximately the amount of whiskey they had made, and he knew the more malt they used the more tax they would have to show that they had paid. And he knew that his books would show these transactions. Yet, he swears here, that at the time he burned his books he did not know that they were of any value as evidence against these distillers. Think of it!

Now, gentlemen, I want to call your attention to another thing. When I asked Rehm, when he was called here on the stand, if he was not asked by the grand jury about crookedness, whether he was not asked about fraud, at first he stumbled into telling the truth but did not stick to it long. He told the truth when he said he was asked about fraud, but told a lie as to how he had answered the question.

It is utterly impossible, gentlemen, to get away from the fact that he did, before that grand jury, swear that he knew of no fraud. You can not get

out of the fact upon Mr. Roelle's testimony. You can not get out upon the idea that Schlichter in writing his notes put it in. Schlichter did not put it into the memory of the old man Samson. Schlichter did not write it in the memory of Mr. Hoag. Schlichter did not write it in the consciousness of Mr. Oleson. Schlichter did not write it in shorthand in the head of J. D. Ward. Schlichter, I tell you, by his shorthand necromancy, has not changed six or seven men into liars whether he put that in the second line from the top or not. He could not make old Mr. Samson come here and say, "I asked that question myself; I thought that when he was there he was the head center of all the rascality, and so just before he went out I put one of those general, pinching questions as to whether he knew anything. It was a kind of conscience scraper."

The old man put that question just as these witnesses were going out: "Do you know anything about any fraud or crookedness?" It was a kind of a last question that would cover the case, and the old man recollects that he put it to Jacob Rehm because he believed at that time that he was the head center of the villainy. Mr. Hoag says he recollects distinctly that question; and he recollects as distinctly how it was answered. J. D. Ward was the attorney of the United States, and he swears that he recollects it perfectly. Oleson was an attorney of the United States. He says that he recollects it

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well. And yet is this all to be accounted for by saying that Mr. Schlichter inserted it in his notes and that all these other gentlemen are mistaken?

The fact is, gentlemen, that Mr. Rehm, when he was there, had not made up his mind that he could make a bargain with the United States to get out of punishment. He did not know at that time that he could keep out of the penitentiary by furnishing a substitute. He did not know, gentlemen, at that time, that he could have any understanding with anybody that if he would bring better blood than his they would deal lightly with him. He did not know then that two owls could be traded off for an eagle; that two snakes could be swapped for a decent man. As soon as he found that out, then, instead of saying that he did not know anything about any crookedness, instead of saying he did not know anything about any fraud, he said, "I know all about it; I know all of them; every one of them."

Gentlemen, I want you to put against that man's testimony the lies he swore to himself. I want you to put against that man's testimony the improbability that he would commit numberless crimes for nothing. I want you to put against that man's testimony the testimony of every one who has contradicted and disputed him. I want you to put against that man's testimony the idea and the fact that he warned these other men against the approach of Munn. I want you to put against that man's

testimony all the circumstances of the case and I want you, in addition to that, to put against that man's testimony the evidence of this defendant.

The district attorney told you that he had sympathy for this defendant, and said that he bore a most excellent reputation. Then he told you that good character was no defense, and all at once I saw his sympathy was a cloak under which he concealed a dagger to stab him. Good character, gentlemen, is not made in a day. The walls of that grand edifice have to be worked at during life. All the good deeds, all the good words, every right and true and honest thing that one does, goes into this edifice, and it is domed and pinnacled with lofty aspirations and grand ambitions. It is not made in a day, nor can it be crumbled into blackened dust by a word from the putrid mouth of a perjurer. Let the snakes writhe and hiss about it. Let the bats fly in at its windows if they can. They cannot destroy it. Above the lowly things rises the grand dome of a good character, not with the bats and snakes, but up, gentlemen, with eagles in the sunlight.

If ever I am indicted for any offense and stand before a jury, I hope that I shall be able to prove as unsullied a reputation as Daniel W. Munn has proved. And when I read those letters, not only saying that his character was good, but adding, "above reproach," it thrilled me. There is not a man on this jury who can prove a better reputation. There is not a judge on the bench of the United

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States who can prove a better reputation. There never was an attorney at this bar who could prove a better reputation. And yet we are told that that splendid fabric called good character cannot stand for a moment against a word from a gratuitous villain. I deny it and hurl it back with scorn.

A good character will stand against the testimony of all the thieves on earth. A good character, like a Gibraltar, will stand against the testimony of all the rascals in the universe, no matter how they assail it. It will stand and it will stand firmer and grander the more it is assaulted. What is the use of working and toiling? What is the use of taking care of your wife and your children? What is the use of being honest in your business? What is the use of living for others? Character is made of duty and love and sympathy, and of the desire to live and work for others. What is the use of being true to principle? What is the use of taking a sublime stand in favor of the right with the world against you? What is the use of being true to yourself? What is the use, I say, if all this character, if all this noble action, if all this efflorescence of soul can be blasted and blown from the world simply by a word from the mouth of a confessed felon? Yet we are assured here in this august tribunal, in a Federal court of the United States, where the defendant stands under the protection of the Constitution of his country, that his character is absolutely worthless.

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They say, "Why don't you bring somebody to impeach Mr. Jacob Rehm?" Why? Because he has impeached himself. If a man tells an improbable story, that impeaches him. If he tells an unnatural story, that impeaches him. If you prove he has sworn a different way, that impeaches him. Why impeach him any more?

Gentlemen, I want to ask you once for all to let no prejudice enter your minds and hearts against this man on account of these times. I understand now that in every man's pathway hiss and writhe the serpents of suspicion. I understand now that every man in high place can be pointed at with the dirty finger of a scurvy rascal. I understand that. I understand that no matter how high his position is, that any man, no matter how low, how leprous he may be, what a cancerous heart he may have, can still point his finger at the man high upon the ladder of fame, and the man has to come down and explain to the wretched villain.

I appeal to you to try this case according to the evidence and nothing else. I want you to say whether you believe the testimony of these conspirators and scoundrels. I want you to say whether you are going to take the testimony of that man, and if you bring in a verdict of guilty I want you to be able to defend yourselves when you go to the defendant and tell him: "We found you guilty upon a man's testimony who admitted that he was a thief; who admitted that he was a perjurer; who

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admitted that he hired others to swear lies, and who committed crimes without number year after year."

Would that be sufficient reason to give to his pallid, invalid wife, or to his father eighty years old, trembling upon the verge of the grave? There is not one of you who could go to the defendant and without the blush of shame say: "I sent you to the penitentiary upon the evidence of Jacob Rehm." You cannot do it. It is not in human nature to do it.

Remember, gentlemen, that suspicion is not evidence. To suspect never gives a right to condemn. Remember also that a thief needs corroboration, and that another thief testifying to the same thing is not corroboration. Why? Because that other thief would want corroboration, and so on until thieves ran out, which I think would be a long time in this particular community at this particular time.

Gentlemen, I am going to leave this case with you. I feel a great interest in it. The defendant feels an infinite interest in it. Infinite, I tell you. All he has is with you. You are going to take his hopes; you are going to take his aspirations; you are going to take his family; you are going to take his child; you are going to take everything he has in this world into your power. It is a fearful thing to take this responsibility. I know it. But it is yours, and you are going to take his future, his character, everything he has dreamed and hoped for, everything that he has expected to attain, everything that is dear to him, and you are going to say

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“Not guilty,” or you are going to cover him with the mantle of infamy and shame forever. You are going to disgrace his blood; you are going to bring those that love him down with sorrow to their graves; or you are going to say, “we will not believe the testimony of self-convicted robbers and thieves.”

Gentlemen, I ask you, I implore you, I beseech you, to find in this case a verdict of “Not guilty.” Put yourselves in the defendant’s place. Do you want to be separated from your wife or your child on the kind of evidence they have against him? Do you want to be rendered infamous during your life upon the testimony of such men as Golsen and Conklin and Rehm? Do you? Do you? Do you? Does any man imagine that twelve honest men can be found to rob another of his citizenship, of his honor, of his character, of his home, of his entire fortune, simply upon the testimony of such scoundrels? No, gentlemen. For this defendant I feel no fear, for I believe that you will give to this evidence just the weight that it deserves.

All I ask of the prosecuting attorney in this case is that he do his duty. All I ask of him is to state just as nearly as he can, as I have no doubt he will, the evidence in this case, and that he give to all these circumstances their due weight, and no more. I ask him to fight for justice and not for his reputation. I ask him to fight for the honor of the Government. We are contending for too great a stake to think of personal considerations. Personally, I

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care nothing about it, but I care everything for my client. I care everything for his honor, and more than that, gentlemen, I love the United States of America. I love this Government, and I do not want to see its very sources poisoned. I do not want to see a state of things in the United States of America whereby a man can be consigned to a dungeon upon the testimony of a robber and a thief, simply upon a political issue, simply by the testimony of some man who wishes to purchase immunity at the price of another's liberty and honor.

The defendant was acquitted.

The *Times*, a newspaper of Chicago, in its issue of May 23, 1876, made the following reference to the trial proceedings of the day before:

"There was an unusual rush to obtain admission to the United States District Court room yesterday to listen to the closing arguments of counsel in the Munn whiskey conspiracy trial which has attracted so much attention during the past ten days. The stalwart deputy who guards the entrance to this judicial precinct was compelled to employ his entire strength and power of persuasion to keep the eager, anxious crowd from trespassing on the convenience and dignity of the Court. About ten o'clock the Court took the bench, and Col. Ingersoll walked into the room, took off a broad-brimmed felt hat, which gives the barrister, while he has it on, somewhat the appearance of a full-grown, well-developed Quaker in good standing in the society to which he belongs. When he has the hat removed, however, the counsellor's appearance undergoes a marked change. He then looks like

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the crop-haired follower of the house of Montague in the Shakespearean play. He sat down on a crazy old chair which threatened every moment to break down beneath his weight, and listened to the remarks of Judge Doolittle for the remainder of the morning, until it came his time to talk. Colonel Ingersoll never troubles himself to take notes of anything. What he cannot recollect he does not have any use for. Judge Doolittle occupied the morning session until the time for adjournment at one o'clock, with a review of the case on the side of the defense. He was followed by Mr. Ingersoll in the afternoon. At two o'clock the court room was more crowded than before, and at that hour Mr. Ingersoll appeared in the forum and delivered his speech in behalf of the defendant."

The Carawan Murder Case

IN 1853, at Washington, N. C., during the November term of the Superior Court of Beaufort County, there came on for trial the case of the State *versus* Rev. George W. Carawan, charged with the murder of Clement H. Lassiter. In many respects it was a most remarkable trial.

Lassiter was a school teacher, and, upon being missed in the community some months before, a search was begun and his body was found buried in the woods. He had been shot to death.

Carawan had previously run Lassiter away from his home, suspecting an intimacy with his wife. A few hours before the murder a suit for damages which had been instituted by Lassiter was served upon Carawan, in which it was alleged that Carawan had made slanderous statements about Lassiter.

As soon as it was known that Lassiter had been murdered suspicion pointed toward Carawan. Carawan fled but returned some months later, was arrested and placed on trial. Judge John L. Bailey presided at the trial.

E. J. Warren for the State and William B. Rodman for the defense made the chief arguments to the jury.

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Carawan made no statement in his own behalf although testimony was introduced by the defense in an effort to impeach some of the State's witnesses.

Mr. Rodman's Speech for the Defense

GENTLEMEN OF THE JURY:

I CAN truly say I never arose to address a jury with so much anxiety and apprehension, and I deeply feel my inability to perform the duty I have undertaken. I cannot but feel that upon the manner in which I shall perform that duty depends in some degree the fate of the prisoner, and of those whose fate is bound up with his.

He himself is far advanced upon the path of life which leads to the grave. In the natural course of events, the period will soon arrive when he will be called to answer before a higher tribunal than this for the deeds done in the body. To him it is of comparatively little importance whether his mortal life shall terminate now, or a few years later. You have seen him attended in court by a wife and three little boys — the objects of his fondest love. The blow which severs the thread of his life will cast them forth upon the world — the orphan sons of a dishonored sire — and stamp upon their innocent brows the seal of shame which no radiance of hope, nor smile of youth, will ever efface.

Great as is the importance of this cause, and

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thinking as humbly of my own abilities as any man can, I should nevertheless approach it without anxiety or apprehension, if it were not for some melancholy and peculiar features with which it is invested.

The law of North Carolina, while it is just, is also humane. It requires that prisoners shall be kept comfortably, and shall be subjected to no other severity than is necessary for their safe keeping. You have heard how this unfortunate man was arrested, and what treatment he suffered under his arrest — how he was confined in a wretched hole, nauseous from filth, where neither the light of day, nor the blessed air of heaven could enter — how during a winter remarkable for the intensity of its cold, he was kept without fire; how he was excluded from the companionship of his wife, his friends, and his counsel — from all from whose looks or whose words he could derive consolation or strength in those hours of darkness and despondency; how in his hearing he was reviled and denounced by all whose ignoble spirits could find pleasure in such a course.

The counsel for the State, while he has extenuated, has not denied nor defended these things. But he asks: "Do they prove his innocence?" I might more properly ask: Do they prove his guilt? They prove neither. They prove nothing but the power of those unfortunate influences which surround this cause. I do not refer to them for proof, but for the admonition to caution, which they contain. In this

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day of intelligence and humanity, the processes of the law established by wise and humane men, for wise and humane purposes, in the case of this individual have been perverted to purposes of oppression and wrong; and that law, which we have been accustomed to boast was an impregnable shield for the humblest and poorest freeman against every species of wrong, in his case has been outraged and set at naught, and up to this hour triumphantly.

This court is but an institution of the same law, the most exalted, it is true, and to which from our infancy we have been taught to look as the last safe and undoubted refuge of the citizen. Let us beware, lest the same spirit which engendered the occurrences heretofore shall insinuate itself into our proceedings. Take warning by the past, I beseech you, and suffer no breath of popular passion to enter the sacred enclosure in which you sit, and disturb the serenity of your judgment.

There is another melancholy feature in this case, the contemplation of which appalls and disheartens me. From the hour when accusation against the prisoner first found utterance, no period of time has been allowed to the public mind, within which the excited passions might be allowed to sink into repose, and calm and enlightened reason resume her dominion.

From that hour to the hour of this trial, rumor after rumor of what had been discovered or what would be proved, each of the most dangerous and

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aggravated character, has been propagated through the length and breadth of the land. Every idle story, every unfounded rumor, started no matter where, how, by whom, or for what purpose, has been rolled through the land, and gathering strength as it went — contemptible at first — has acquired in its progress stupendous proportions.

I cannot hope that these rumors have left your ears alone inviolate. Would to God that I could be as certain that you could succeed in expelling from your minds every vestige of prejudice and prepossession against this unhappy man and his cause, as I am that you will honestly and conscientiously *endeavor* to do so. But it is not in the compass of human nature. We did not choose you believing you to be indifferent; but because we believed you to be honest and conscientious men, who would make every effort to do justice, and I can only conjure you, as I most earnestly do, to forget all you have heard of this transaction anterior to the testimony in the cause, and to enter with me upon the consideration of that, determined to give to every argument I shall advance in the prisoner's behalf the full weight to which it may be entitled, and to be guided by those principles of law which shall receive the sanction of this learned and impartial court.

What, then, is the issue which you are impanelled to try? Is it whether the prisoner has proved himself innocent of the accusation? God forbid you

should make so fatal an error. Is it to determine who, among all the persons suspected, most probably killed the deceased? That would be equally erroneous. It is whether it has been proved beyond a reasonable doubt that the prisoner killed him. So sacred is human life in the eye of the law, that while in civil causes involving the most valuable interests a mere preponderance of proof, the mere inclining of the scale one way or the other, will justify a verdict accordingly, yet in all criminal causes, and more especially in all capital causes, the law requires full proof.

This is a case of circumstantial evidence. I will not detain you with any general remarks on the uncertain nature of this sort of evidence in general. We do not contend that circumstantial evidence will in no case justify conviction; we admit the contrary. We say, however, that where, as here, it consists of a number of unconnected suspicious circumstances, it is of a kind most apt to prejudice and mislead a jury, and requiring the utmost caution in its application.

The theory of the State is, that the deceased passed the prisoner's house on the evening of Monday, the 15th of November, going along the road to the lake; that the prisoner shortly afterward left his house and went along and behind the back fences of the field on the road, and catching up with the deceased, shot him at or near the two pines on the road.

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The State presents each of its witnesses to you as credible and faithworthy, and if there shall be found a variance between them in any essential point; if, for instance, one of them shall name a certain hour as the time of a certain event, which hour is incompatible with the guilt of the prisoner; and another witness, equally credible, shall name a different hour, as the time of that event, which is compatible with the guilt of the prisoner, and there being no reason to fix on one hour rather than another, I am entitled in a case of this sort upon every principle of humanity and of law, to assume that hour as the true one which is most favorable for the prisoner. I may not have occasion to resort to this principle, but it is convenient to state it. If the State's witnesses differ on any essential point, there is doubt at once, and to seriously doubt is to acquit.

I propose now to trace the deceased and inquire whether it is possible that the prisoner crossed his path. He left Dorset Mason's sometime on Monday morning. He took dinner at Thomas Bridgman's, and left his house at three o'clock or a little later, walking along the road towards the lake. Thomas Bridgman is a witness for the State, and a man of excellent character. His testimony was given in a way which commanded the respect of all. He is a farmer and a woodman of great observation and experience, and it is well known that persons who are in the habit of judging of the hour of the day by observation of the sun alone, arrive at it

with astonishing accuracy. His attention in this instance, he says, was especially called to the time, for he says he had work to do which was urgent; he was restless, and anxious for Lassiter to be gone. You might rely safely on his testimony as to time even if he stood alone and unconfirmed. But his testimony is confirmed on this point, in an incidental and wonderful manner, by Thomas Gibbs, another witness for the State, an old man, too, of equal observation and experience, who can be charged with no sympathy for the defendant, for although neighbors, they have been at enmity for years.

Let us follow Lassiter. After leaving Bridgman's at three o'clock or a little later, he stopped at Thaddeus Brown's about five minutes, and at Thomas Gibbs' ten or twelve minutes. From Bridgman's to Gibbs' is three-eighths of a mile, which it would take him about ten minutes to walk. This ten minutes added to the five minutes he stopped at Brown's, and the twelve minutes he stopped at Gibbs', would make 27 minutes, or make it about half-past three when he left Gibbs'. Now Gibbs says that when he left his house the sun was about an hour and a half high. The sun set on the 15th of November, in the latitude of Raleigh, at four minutes past five, and where these occurrences took place, some minutes earlier.

Lassiter left Gibbs', then, at half-past three o'clock. This cannot be doubted; it is proved by two respectable witnesses for the State, and con-

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firmed by the comparison of a number of minute circumstances coming out in their testimony, altogether undesigned in that view, and the bearing of which they could not see. Seldom is an important fact so indisputably demonstrated.

What, then, became of Lassiter? He was seen no more alive, and over the scene of his death hang darkness and mystery; but we may follow him at least a little way with almost perfect certainty. He was bound to the lake, to whose house particularly we do not know; but from Gibbs' to the nearest house beyond was over two and a half miles; the way was lonely and desolate; the day was blustering and bitter cold; the shades of night were gathering over the earth; he had no motive to loiter, and if we are to believe that he really entertained fears that the prisoner would attack him on that road, as he told Mason he did, he had every motive to hurry on his journey; he was young, athletic and active, unencumbered with any burden except a small carpet bag; the road was firm and level. Under these circumstances, may we not conclude with almost positive certainty, that after leaving Gibbs' he travelled as rapidly as he could, and that in an hour, or hour and a half, had not death intercepted his progress, he would have traversed the two and a half miles between him and the lake, or at least have gone much farther than the two pines which are less than one mile and five-eighths from Gibbs'?

Let us leave the deceased now in the darkness

and mystery into which he plunged after leaving Gibbs', and into which it is much to be feared no ray of human testimony will ever penetrate, and come to the prisoner.

Lassiter left Bridgman's house at half-past three, or a little later; he must, then, have passed the prisoner's, which is 239 yards beyond Bridgman's, a little later still. Carawan Sawyer says the deceased passed the prisoner's house about two o'clock. But without adverting at all to the principles I have already stated, can it be doubtful whether you should take the hour stated by two witnesses for the State, such as I have described them, and corroborated as I have shown their statements to be, or the hour stated by this young man, without education, observation or experience, having no reason whatever to notice the time, and uncorroborated by any circumstance whatever? This point as to the time, then, may be regarded as settled.

Sawyer says that the prisoner was in his own house when Lassiter passed; that he came out in about twenty or twenty-five minutes after Lassiter passed, and went through the fields to the woods, being followed by his wife with a gun. The prisoner, then, it is said, left his own house for the purpose of intercepting the deceased, about the time that the deceased left Gibbs', as near as can be ascertained.

Now arises the vital question, whether, considering the distance and the character of the way which

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each had to traverse, it was possible for the prisoner to have intercepted the deceased.

The deceased, we have seen, was young, active, unencumbered, having a smooth, firm way, and every motive to urge him to moderate speed, and having to traverse only up that one mile and five-eighths to reach the two pines. The prisoner, we are informed, is 56 years of age, retaining the strength of manhood, but having long since lost the activity of youth.

Mr. Swindell, in company with Topping, Day and others, in May last, after the importance of this question I am now discussing was ascertained and with a view to its solution, and for the purpose of testifying in this cause, made a diligent and careful examination of the country back of the defendant's field, through which it was supposed by all the neighborhood the prisoner must have passed, if he passed at all. His particular object was to ascertain the quickest route from the back of the prisoner's field to the two pines of their neighborhood. He was kind enough in the course of his examination to mark out on the map which I hold the line which he found to be the quickest possible between the two points. You will perceive that it begins at the prisoner's field, going off from the road to Swan Quarter, while Topping (also a State's witness) said the cow paths inclined towards the Swan Quarter road, which would make the distance longer than Swindell has represented it. I mention this simply

for the purpose of showing you that if Swindell has committed an error at all in his line, it has not been in favor of the prisoner.

All the witnesses say that it is impossible to pass in anything like a straight line from the prisoner's to the two pines, on account of the density of the undergrowth. Bridgman says it would take two-thirds of a day to do so. Until this trial, no other route has ever been at all possible, except the one drawn by Swindell; now, indeed, it is suggested that a possible route might be found along the back of the fences, but if that suggestion had been feasible it would have occurred long ago to some of those active prosecutors residing in the neighborhood, and familiar with its every nook and cranny, and most earnestly desiring the conviction of the prisoner.

Moreover, the prisoner, in passing along that route, would have exposed himself to have been seen by Thomas Gibbs, who was that very day engaged in sowing wheat in the back part of his field, and by Jesse Jarvis, who lives in the very back line of Gibbs' field. The impracticability of that route is so clear that I shall waste no further observation upon it, but confine myself to that which Swindell has pointed out.

Some of you may be familiar with the sort of country he describes this to be. It was burnt out some years ago, and since that time has grown up in places with bay bushes, gallberry, cat-claw briars and bamboo, through which no man can pass, with-

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out slowly and laboriously cutting or breaking his way; in other places the burnt soil has become sterile, and is covered only with a thick and yielding moss. These open places, he says, are generally connected with each other, so that a man perfectly familiar with the woods might in a great degree avoid the impassable thickets of briars and vines. But you must recollect that in this winding and twisting about, what a man gained in ease, he would lose in distance, which would be greatly increased, and it is extremely doubtful whether anything would be gained in time.

Such was the character of the route which the prisoner must traverse, as compared with that of the deceased; and in distance, without computing the minute windings, which would be so important in fact, it was nearly or quite half a mile longer than that before the deceased.

Bridgman says he could not travel that route in less than one and a half or two hours; and the prisoner is not more active than he is. Day thinks it could not be done by an active, unencumbered man in less than one hour. Topping agrees with him, and even Swindell does so, too. The State, indeed, professes to give superior weight over these witnesses to Jarvis, who, speaking from no special examination, but from his general knowledge of the country, merely says it might be done in half an hour; but it is obvious that he is not entitled to any superior credit; nor can the State insist on it.

You are now in a position to decide whether it is likely that the prisoner, encumbered by a double-barrelled gun, could have intercepted the deceased. Is it not morally certain on this proof that if the prisoner started with the view of meeting and attacking the deceased, some other hand anticipated the deed?

We have seen the prisoner leaving his house; now, at what time did he return? As Sawyer is the only witness who speaks of his going, so he is the only one who speaks of his return. On every other occasion, when this witness has related this transaction, up to this trial, including his conversation with Ira Topping last spring, he said the prisoner returned by half an hour before sunset; on his examination in this trial he departs from that time, and fixes the period of his return at sunset. Without at present impeaching the integrity of this witness, I might well argue that his repeated former statements, sworn as well as unsworn, were more likely to be correct, but I am able to be content with the time he now fixes.

The theory of the State, then, requires that the prisoner should have gone over this route I have described; have intercepted the deceased and slain him; have disposed of the body, and have returned in an hour or an hour and a half; a thing which, if the witnesses for the State are to be believed, is a physical impossibility, or, to undertake no more than is imposed on me, is in the very highest degree

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improbable. Is the theory of the State as to the prisoner's guilt consistent with all the facts? Do not the very facts most clearly demonstrated stand in hostile and irreconcilable contradiction to this theory?

I proceed now to consider some suspicious circumstances which have been greatly relied on by the State. They are suspicious circumstances and nothing more; sufficient to put a person on trial, but not sufficient to convict him; they may confirm a case which is already proved, but no number of such can ever amount to proof. Unfortunately, there are too many such in this case, which give a delusive appearance of guilt, which vanishes, however, as soon as the circumstances are fairly weighed and considered.

The Solicitor says he has proved that the prisoner had a motive to commit the crime. I care not what provocation the prisoner may have had to commit the crime. I care not even if he desired to commit it; if he had not the opportunity or means to commit it, he did not do it. The Solicitor has introduced Albin Swindell, Bartholomew Swindell, Thomas Smith and William Tyson to prove a motive.

If the deceased was guilty of the conduct of which the prisoner complained he was, then he was very little worthy of the sympathy which has been excited in his behalf. Boarding in the prisoner's house, he takes advantage of the situation which the confidence and kindness of the prisoner had permitted him to

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occupy, and, while the prisoner is absent on his ministerial duties, seduces his wife. When the prisoner on his return mildly complains, he assails the prisoner's life; and when the prisoner expels him from his house, he curses him in the road, and challenges him to combat; and finally, when the prisoner bewails to his friends the ruin of his domestic peace, he sues him for slander and lays his damages at \$2,000.

I can conceive no combination of outrage and insult greater than this. To some men such motive might have been ample. But the same provocation operates differently on the same man at different times. And the question here is, not what in the abstract would be the effect of such provocation on man in general, but the more practical one, what was actually its effect on the prisoner? We must consider his age, his sacred calling, and the peaceful creed to which his mind and feelings had long been disciplined and which he professed at least to inculcate by word and example. It appears to have excited in his mind no emotion of vengeance; he used no expression which, fairly construed, amounts to a threat. He seems rather to have regarded the wrong as a thing which when done could not be redressed, to have submitted to it in silent grief, and to have been plunged into the profoundest gloom and despondency.

Observe him as described by Banks. He neglects his professional appointments; he shuns the society

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of his friends, and their festive meetings; he retires to his boat and yields himself up a submissive victim to consuming grief. He complains that the public had turned against him, and seems to have resolved to abandon the unequal contest, to abandon his country, to fly from the acknowledged enemy and the domestic traitor, and to commence in the distant West, where his dishonor should be unknown, a new chapter in his life.

Can we say that the outrage which he did not regard as a sufficient provocation to violence when it was fresh, and when violence would have been justifiable, was such that it must of necessity long afterwards have driven him to murder? And can we suppose that the mere service of a civil writ, which the prisoner well understood, and from which he did not anticipate any injury, could have produced that reckless desperation which the seduction of his wife and the assault upon his life had failed to do?

The shot are exhibited with great parade, and we are told that those extracted from the body correspond with those extracted from the prisoner's gun, there being three sizes of each. The answer to that is easy. Those who buy shot in a country neighborhood like that, buy from the same store, and buy of necessity the same sizes of shot; and everybody mixes his shot, because it is well known that most guns shoot better with mixed shot. If all the shot from the body had been produced, instead of four

only, and all from the gun, instead of four or five only, and the proportion of the different sizes in each had been the same, the argument would have been strong; because although everybody mixes shot, it is not probable that all would mix them in precisely the same proportion. But this has not been done — I do not say from any wrong motive, and I care not whether by accident or design. But I am justified by the law in assuming that the portion of the testimony withheld would have made for him; and that, if the whole of the shot had been produced, the different proportions of the two mixtures would have negated any identity of source.

We are also told that the prisoner fled, and that his flight is evidence of his guilt. Flight before accusation is strong proof of guilt. But when accusation has been made, when indignation has been studiously excited, when judgment has been pronounced before proof and when the accused has reason to fear every barbarity from an infuriated mob, flight is no proof of guilt. When the law is nullified by popular opinion, as innocence is no defense, the most innocent may dread and the bravest tremble. Flight under such circumstances is not confession, but prudence.

If flight is evidence of guilt, what is a voluntary return? Surely that is evidence of innocence. Only he who is proudly conscious of innocence and confides in the protection of the law will voluntarily return to meet certain imprisonment with all of its

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hardships, and certain trial with all of its disadvantages.

As to the letters found in the prisoner's dungeon, if they proved a desire on the part of the prisoner to have the witness Sawyer removed, and to suppress his testimony, it was because he thought he was in the hands of his enemies, who were drilling him to falsely swear away his life, a fear which the events of his trial have too strongly confirmed. He knew the witness was weak, pliable, and might be moulded to any purpose. It is in the nature of man to conform his resistance to the nature of the attack that is made upon him. The conduct of the assailant constituted the laws of war. It is natural to repel open force openly; law by law; fraud by fraud; and to use a common phrase, "to fight the devil with fire." Christianity may teach patient submission to every wrong; but who will blame the prisoner if, to repel subornation of perjury, he attempts to suppress the perjured testimony? It was the perjury he dreaded, not the truth.

Observe, too, the circumstances under which these papers were written, when the prisoner was being treated with every refinement of cruelty, when he was deprived of intercourse with friends or counsel, and when he was reduced to a state well nigh bordering on madness. They were the obscure and incoherent ravings of desperation, produced by a sense of grievous wrong and the hopelessness of contending with it.

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My argument hitherto has been founded on the assumption that all the witnesses for the State were credible, or at least were not wilfully false. Carawan Sawyer has been termed by the Solicitor, with great truth, "the principal witness." Without his testimony some circumstances, apparently suspicious until examined, are all that remain; without him there is no proof of anything pretending to be proof, connecting the prisoner with the homicide, or showing that he had the means or the opportunity of committing it. This must in fairness be conceded.

It is, then, a very grave and important question, what credit is due to Carawan Sawyer? I think we are justified in saying, none. In the first place, it must be remarked that his testimony in all its material parts stands alone and entirely uncorroborated. In the second place, it is intrinsically most improbable. It is most singular and incredible that the wife of the prisoner, who is not proved to be left-handed, and is therefore presumed to be right-handed, as the great majority of people are, should have carried the gun in her left hand, her left side being exposed to the witness, more especially when her object was concealment, as is shown by her concealing it in her apron, and when by carrying it in the natural and ordinary way on her right side it would have been effectually and completely concealed; it is very singular that when she attempted to conceal it with her apron, she would not have concealed it entirely but should have, as it were,

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purposely defeated her own purpose, by leaving the breach exposed.

A witness who has been convicted of perjury, on grounds of public policy, and for the safety of citizens, is not allowed to be heard by a jury; and I assert it to be a principle of law, for which I ask the sanction of this Court, that a witness who appears upon a trial to have sworn upon a former judicial inquiry or to the same matters differently in a material particular, from what he swears to upon the trial, and to have varied corruptly, is convicted of perjury in that trial, and is equally to be disregarded as if he had been convicted of perjury, and sentenced of record.

I further assert under the same sanction that if upon this trial the witness Sawyer falsely denied having told to Moore, Bridgman, Brooks, Topping and Armstrong, or to either of them, what they say he told them, he well knowing that he had so told them, then in like manner he is convicted of perjury on this trial, and his testimony is to be entirely disregarded.

You cannot doubt, because Sawyer himself admits it, that when he was sworn before the coroner's inquest—and he was sworn then as now to tell "the whole truth"—he then said nothing about a gun. Can you doubt that in testifying before the coroner so shortly after the event, when the transaction was fresh in his mind, he must have recollected it? Rather, can you doubt that his testimony

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then was true, and his testimony now is false and corruptly so? In no event can both stories be true; one must be false and corruptly so, for the variance is of a character which the highest charity cannot impute to mistake.

Again, can you doubt that he held the conversations with Moore, Bridgman, Brooks, Topping and Armstrong, which they testify to, and that he remembered them? His first conversation with Moore was of a nature he could not forget, and it has been several times recalled to his memory since. It is now said for the witness, that in that conversation, he was telling a lie under the influence of the prisoner. If so, and it has slipped his recollection under the circumstances which have since taken place, a lie must be to him the most familiar and ordinary of all occurrences.

If ever there was a witness who could be called tainted, it is the witness Sawyer. It is true we did not attempt to prove that he had a general bad character for truth, and a faint and unsuccessful effort was made by the State to give him a good one. But it is evident that he had acquired no general character at all. He has not even yet attained the age when by law he is his own master, and can make his own bargains; his life has been spent in the obscurity and retirement of his uncle's farm; he has had no occasion to mix with the world, and whatever his native disposition may be, it is undeveloped, or at least certainly unknown

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beyond the circle of the household in which he has lived. We have adopted a much stronger method of impeaching him; we have shown that he has never been able to tell his tale twice in the same way. He told Moore on Saturday morning that the prisoner was at home all day Monday, Tuesday and Wednesday and he knew it. And at this time, so far as we can see, he was under no inducement to swerve from the truth. According to his own account this was before anybody offered to bribe him. If it was a lie it was a voluntary one. Now he not only swears the prisoner was not at home on those days, but that he never told Moore that he was.

Again, on Saturday evening he goes to Moore and tells him he had made a mistake, that the prisoner was not at home all day Monday, that he went off with the cart to get a load of corn, and returned with the second load. He now swears that he told Moore no such thing. Both these statements exculpate the prisoner absolutely. But the Solicitor says that before this last statement to Moore was made, the prisoner had offered to bribe him, and that he was lying under the influence of that offer.

But, as the witness told Topping so late as last spring, this offer to bribe was not made until the prisoner met him in the woods as he was going off, which was several hours after Moore left. And it is very singular that under the influences of an

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offered bribe he should tell a lie, but not the lie he was bribed to tell.

These in truth were the statements of the witness before he had been subjected to any improper influences. With the departure of the prisoner commences a new scene. The enemies of the prisoner take possession of this weak-minded and foolish boy. The work of his tuition begins, and we shall see how, just as the necessity is discovered, fact after fact, or rather invention after invention, is patched on to his story until it is presented on this trial as the complete and perfected production which is to envelop the prisoner in its mortal folds. He is first taught to regard his benefactor, who had taken him into his house when he had neither parents nor friends, and for ten years had treated him as his own child, with hostile and malignant feeling. This is evidenced by his conversation with Thomas Bridgman, a few days after the prisoner's departure. In the meanwhile the witness is sworn before the Coroner, and there says the prisoner had no gun. The enemies of the prisoner were so blinded by malice that their capacity was at fault. They had not yet discovered the necessity of proving that the prisoner had a gun. Then comes the third conversation with Moore, in which he again said that if the prisoner had a gun he did not see it, and he did not know where the gun was.

Then, probably, occurred the conversation which Brooks heard, though Brooks thinks it was in

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December and after the witness had been sworn before the Grand Jury. In this conversation he says again that the prisoner had no gun when he went to the woods, and being asked how he supposed he got the gun, he replied that he did not know, unless he had carried it out in the woods the night before, or before day that morning.

But court comes. It is discovered that the prisoner must be supplied with a gun, and forthwith he is supplied. The witness had sworn before the Coroner that the prisoner had no gun. He had also said to others that he did not know where the gun was, but he had not sworn that before the Coroner, probably because he had not been asked that particular question. The witness comes to be examined before the Grand Jury, and he is asked if any one else had a gun, a singular enough question truly; and then the oath before the Coroner is patched out with the invention that the wife had the gun, to which must be added in due time, to sustain it, the absurd story that she, a right-handed woman, carried it in her left hand on her left side, concealed in her apron, with the breech exposed. So devious are the paths of fiction that circumstances must be paired together which cannot be matched, and which show by their repugnancy their lack of kinship with each other. The coins from the mint of truth are all alike and stamped with the impress of the same sovereign features.

This witness tells Thomas Bridgman afterwards

that the prisoner wore back the same clothes that he wore off on Monday. Now he says he does not recollect about that; he did not notice his clothes. You will perceive that this failure of recollection is to let in the "double-weave, blue-mixed," fiction of Bartholomew Swindell, who recollects distinctively the clothes the prisoner wore on Monday and Tuesday, even to the hole in his hat, but does not recollect anything about the clothes of anybody else that day nor what kind of clothes he himself had on.

The witness further tells Bridgman that the prisoner got back, half an hour by sun on Monday, and that he himself went into the kitchen on his return from Bell's on Monday night, though he now says he did not. To Ira Topping, so late as last spring, the witness stated that the prisoner got back half an hour by sun on Monday. Indeed, he has stuck to this throughout, until this trial, and it is the only particular in his whole testimony that he has stuck to so long. One would suppose it would be indelibly impressed on his memory and that shame alone would compel him to adhere to it. But, as if to show that he is as insensible to shame as to truth, and to destroy the last particle of claim he had to credit, he now abandons that and says the prisoner did not get back until sunset.

This sacrifice was made with reluctance no doubt; but I shall show you how it became necessary. These surveys and examinations of the locality were not made until after the conversation with Topping;

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the importance of time had not become apparent; it had not been seen that the prisoner could not have performed the feat assigned to him within the time allotted. But the surveys were made in May last; and it then became evident that the time must be prolonged, or else all the labor had been in vain; and it is prolonged accordingly.

Gentlemen, the Solicitor said he would not take you through any dark and labyrinthine way to a verdict of conviction, and I ask you, does the testimony make that clear and open road through which alone you can safely walk to so dreadful a conclusion?

I now take leave of this case. I have endeavored to discharge my duty to the best of my ability; to say neither too little nor too much. Where I thought the witnesses were mistaken, I have said so, and no more. I have thought one witness perjured, and I have not hesitated to say so. I will go out of my way to denounce no man in any case, but I will always fearlessly assert what I believe is proven in the cause.

With one word more I shall leave the prisoner in your hands. It is possible that when you retire there may be a difference of opinion among you. In such a case, what is your duty? I will give the reply by reading from the opinion of Judge Ruffin in *State versus Ephraim*, a North Carolina case:

If twelve men indifferently chosen, after full argument and instruction from the court upon the law, and oppor-

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tunity for full deliberation, be not agreed of the guilt of the accused, he ought to be acquitted.

Mr. Warren's Speech for the State

GENTLEMEN OF THE JURY:

I KNOW you are fatigued by your long confinement and close attention here, but I am sure that you will hereafter feel amply repaid by the consciousness that you have done your duty, and given this case that full and fair consideration which it deserves.

Counsel for the defense told you that this prosecution had been conducted in such a manner as to shock his delicate sensibilities and that the State had practiced a discreditable system of humbug and deception.

I profess to know something, gentlemen, of what my duty and my profession require of me, and also of what my own self-respect demands at my hands. But if I do not; if on this subject I need instruction and enlightenment, assuredly I shall not ask it of the paid counsel for the prisoner at the bar. Let them put their advice and their denunciation in the same pocket with their fees.

I desire first to state what I conceive to be the issues you are called upon to try. We have heard eloquence enough to acquit the prisoner if eloquence could avail him. We have heard also of a syste-

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matic persecution of the prisoner. Counsel talk as if the people of Hyde County are all on trial for high crimes and misdemeanors; the charge is that the witnesses have been guilty of perjury, and that the rest of the people have committed subornation of perjury. They tell us also that the prisoner has been foully and barbarously treated; that the Sheriff of Hyde is an inhuman wretch; that he confined the prisoner in a loathsome dungeon, without light, or air, or fire, or intercourse with his fellow men. The prisoner was confined in the dungeon, it is true, the safest apartment of the jail, without fire, but with a comfortable bed, and was supplied with light both night and day. Ah! gentlemen, one important fact I had nearly forgotten. It is said that a very respectable member of the bar vomited there while visiting the prisoner. But we have not heard that the prisoner or his counsel were so seriously affected. They may congratulate themselves on having stronger stomachs than some of their professional brethren.

They complain also that the State has suppressed testimony which would make in favor of the prisoner, while it has most carefully gathered together every word and circumstance which makes against him. What would they have? Do they wish us to call the prisoner himself upon the stand — to allow him to make testimony for himself after the fact? My purpose, gentlemen, in noticing these things, is to relieve your minds and clear the case of all those

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collateral issues which the prisoner's counsel have sought to throw around it. I ask, what have any of these things to do with the guilt or innocence of their client?

But if they are relevant, then I submit that there is no evidence of persecution, no evidence of conspiracy, no evidence of bribery; no evidence of barbarous treatment of the prisoner. All these things exist only in the imaginations of the prisoner's counsel and are thrown in to support a defense which needs all the succor that the ingenuity of art can suggest.

Gentlemen, what are you to try? Simply whether or not the prisoner is guilty of the crime of murder. It is not whether public sentiment may be against him, for it would be strange, indeed, and would indicate a disordered state of the public mind, and a most infamous state of public morals, if public sentiment were not against one who had perpetrated such a horrible act.

The evidence in this case discloses a murder as foul and atrocious as can be found in the history of crime. A fellow citizen in the vigor of his years, in the enjoyment of life, in the innocent pursuit of his avocation, is waylaid and assassinated in the public highway. Without a moment's warning, without time for the briefest prayer, he is sent into the presence of his Maker. His body is dragged into a dense and almost impenetrable forest, and there most carefully concealed and buried. No trace

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marks the spot where he fell. No track points the way to his hidden grave.

Gentlemen, the bare mention of such a crime as this would be sufficiently startling anywhere: but here in a peaceful and quiet community, where the laws that protect human life are so seldom violated, it is calculated to fill the public mind with horror and alarm. With such a crime the prisoner at the bar stands charged.

There is no question here as to the degree of this homicide. The prisoner at the bar is either guilty of murder or he is not guilty at all. Counsel do not pretend, as much as they have sought to excite sympathy for the prisoner and indignation against the deceased, that there is any justification of the crime, or any circumstance that can possibly mitigate it to a lesser degree of homicide. No, gentlemen, all the abuse that has been poured out in such torrents on the deceased, all the talk of adulterous intercourse, all the eloquent denunciations from the law of Moses, are foreign to every legitimate issue of this case.

Although it is important to remark that by their course of argument the prisoner's counsel have supplied for us what they deny we have proved by the witness, a motive on the part of the prisoner for the commission of the murder; yet it is proper for me to say that there is not the slightest proof made, or attempted to be made, that Lassiter ever had criminal intercourse with the prisoner's wife. His

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counsel have suggested it, not as a defense, for they know it can not avail them, but with the sole object of operating on your sympathies and feelings.

Now, gentlemen, what are the defenses which are set up and relied upon by the prisoner's counsel? If I understand them, they are these: first, that the evidence, supposing it to be true, is not sufficient to warrant a conviction; also, that it comes to us out of the mouths of perjured witnesses.

If I have omitted any ground on which they rely, I wish them to state it now, as I do not desire to do any injustice. Having no other ground, they necessarily admit, and no logic can evade it, that their complaints of the State's counsel, the cry of persecution they have raised, the denunciations they have thundered forth upon the people of Hyde, the abuse and villification of Lassiter, and the emphatic repetition and endorsement of the language of the prisoner that "he ought to have been shot and shooting was too good for him" — that all these things are not pertinent to the case and form no legitimate part of the prisoner's defense.

You have heard a great deal, gentlemen, during this trial — more, probably, than in all your lives before — about circumstantial testimony, and have heard read cases of the most affecting character, where juries rendered incorrect and mistaken verdicts based on such testimony. Many of these were read by the eloquent counsel who last addressed you with great "discretion and emphasis." It was

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from him the charge of humbug came. Gentlemen, I know what I say, and I know under what responsibility I say it, when I tell you that there is not a respectable lawyer in North Carolina who, when he reads these cases for the purpose of operating on the minds of the jury and weakening their confidence in the force and effect of such evidence, does not laugh in his sleeve. I throw the charge of humbug back upon him; let him digest it as he can.

What is circumstantial evidence? It is the evidence of facts which, according to the course of human experience, usually and almost invariably accompany an act. It is the evidence of such facts as usually precede, follow and attend the commission of a crime and from which that crime may be inferred.

We are here met at once by the assertion that evidence of this kind is not to be acted on by a jury; that it must be, from its very nature, unsafe and unsatisfactory. Yet, gentlemen, we act upon it in all the affairs of life, in all our transactions with the world, with this difference: that it is not verified by an oath. Nothing is more common than cases of circumstantial evidence, both civil and criminal. All our courts constantly act on it. There is no administering the law, there is no preserving the peace of society, there is no protecting of life and property, except by applying the rule of circumstantial evidence in courts of justice.

If a man commits theft, he does it not in the

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presence of his fellows. If he commits arson, or burglary, or robbery, he takes no witness with him to testify to the act. If he commits murder, if he coolly and deliberately plots the crime of blood, he seeks to perpetrate the crime where no eye can see him and where no human sagacity can follow his footsteps. How can he be detected or brought to answer to justice and the violated law except by administering the rules of circumstantial evidence?

We can not arrive at *infallible* truth in any verdict, whether based upon positive and direct or on circumstantial testimony. Omniscience belongs only to God. Infallibility belongs not to man, but only to a power infinite in all its attributes. We are compelled to put trust in human testimony, but can not be absolutely certain of our judgments. All the law requires is that you should be satisfied in your own minds beyond a reasonable doubt. You must see that the facts and circumstances of the case are inconsistent with the innocence of the accused. The law does not require, as prisoner's counsel have told you, that you must be satisfied beyond all possible doubt, for that you can not be from merely moral evidence of any kind. It is beyond "a reasonable doubt." And what is that? Not a trivial doubt; not a vague, floating, indistinct suspicion of the mind, but a substantial doubt, such as men act on in the important affairs of life. This the law regards as a reasonable doubt.

But, gentlemen, Mr. Bryan has told you — com-

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plaining of the rules of the law, the benefit of which he invokes every day in courts of justice — that this matter of circumstantial evidence is one of the most cunning inventions ever devised of men to take away human life, and that it has destroyed more than all else besides war; that the sword, perhaps also pestilence and famine, must give place in destructive power to circumstantial evidence. But I wish to show him and to show you that there is one other device, one other offspring of the human mind, one other engine, even of our courts of justice, that has taken away more lives (unjustly, I mean) at the bar of justice than this monstrous instrument of judicial murder. I read from the same authority:

“Nor can any argument against the validity and sufficiency of circumstantial evidence as a means of arriving at moral certainty be drawn from the consideration that it has occasionally led to erroneous convictions, which does not equally apply as an objection against the validity and sufficiency of moral evidence of every kind; and it is believed that a far greater number of mistaken sentences have taken place in consequence of false and mistaken direct and positive testimony, than from erroneous inferences drawn from circumstantial evidence.”

I have tried to clear away some of the difficulties with which the prisoner's counsel have sought to encumber the case. Let us now examine the testimony and see, in the first place, whether the prisoner had a motive. I have already remarked that in calling Lassiter an infamous wretch who had vio-

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lated the prisoner's bed, counsel had themselves admitted and imputed a motive. So crooked and tortuous are the ways of guilt that even those who defend it seem inevitably to involve themselves in absurdities and contradictions. But apart from this, the evidence itself discloses a motive.

In August the prisoner drove Lassiter from his house. A feud had sprung up between them. Whatever may have been its origin I do not care, and it has nothing to do with the case. The prisoner told him if he did not leave, he would make a hole through him as big as his arm. He left.

August court comes and he gets out a peace warrant against Lassiter, stating at the time to Thomas Smith and Josiah Jarvis: "It is God's holy truth that that man and I can't live in the same neighborhood."

Shortly after August court, in the month of September, he goes to Pasquotauk, where he had an appointment to preach. He refuses there to perform his duties. He is dejected and troubled. The same passion is working in him, and, as the witness Banks testified, Lassiter appears to be his trouble. He would rather, he said, "be dead than alive."

A few days before the murder, in conversation with Tyson, who, I submit, has not been impeached, he said in reply to Tyson's declaration that he had never seen Lassiter: "If you never have seen him, it is likely you never will."

The next conversation is with Bartholomew Swindell. Although the counsel for the prisoner

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accuse him of perjury without even the shadow of evidence to sustain the charge, yet they do not deny the fact of the conversation at his boat at Rose Bay. This was during the week preceding the murder. After some remarks about his bears and his lake land, he said he wanted to get out of this infernal Lassiter scrape. And what was the next expression of this man, who, they say, preached the gospel of the Son of God — who taught the requirements of God from man to man — who broke the bread of life — this holy man of a despised sect — what were his next words? “The infernal ——: he ought to be shot, and shooting is too good for him.” What was he then thinking of, only three or four days before the murder? So far as appears, he never mentioned the name of Lassiter without loading him with invective. He had not only a motive, not only malice and ill will, but he had planned and plotted the very means and instruments by which to accomplish his death. “He ought to be shot, and shooting is too good for him.”

We have thus, gentlemen of the jury, traced him down from before court in August, through the month of September, to the time of the commission of the murder. On that day, a few hours before the act was perpetrated, the deceased, unable to endure any longer the prisoner’s slanderous imputations, caused to be served upon him a writ, claiming damages to the amount of \$2,000. Do you believe that when this writ was served it did not kindle up

the fire of vengeance in his heart? He had been brooding over and nursing his malice for months. It is a most pregnant fact that this was on the very day of the murder.

Gentlemen, this indictment has been pending for twelve months; the murder was committed more than one year ago. The prisoner has been able to employ counsel as distinguished as any in this part of our State, and yet in all this time, with all his means and with all his friends, he has not been able to procure evidence enough to raise the shadow of a suspicion that any other man on the face of the earth had a motive for compassing Lassiter's death.

The prisoner at the bar, then, had a motive. All he waited for was an opportunity, and an opportunity came. It came, as it always comes, to a fixed and settled purpose. It came, as it always comes, to the persevering passions of hatred and revenge.

One of the prisoner's counsel frankly admitted that it was not impossible for the defendant to commit the crime; that is, to go through the woods in time to cut Lassiter off and kill him; but he took good care to retract the admission later. I wish to call your attention at this point to one thing in regard to this map. There has been much talk of humbug. The counsel tell us the distance is two and one-eighth miles from Carawan's through the woods to the two pines. How? By a surveyed line? No; but they cunningly and insidiously get a

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State's witness, while on the stand, to draw lines with large curves and then measure those lines. Why, they might in this way as easily have made the distance five miles as two. It is evident at a glance that the distance is less than by the road, for the road makes an angle. So much for the map.

Lassiter starts in the morning from Mason's with the purpose of going to the lake to teach school. He has the day before him. He saunters along, and at dinner time reaches Thomas Bridgman's. He leaves Bridgman's after dinner, goes on to Brown's, stops to talk with him five or ten minutes, then on to Gibbs', where he stops twelve minutes more. He has time to walk leisurely and time to stop and talk with everybody he meets. And he had no cause to make haste, as he could easily reach the lake before night. The prisoner left his house in twenty or twenty-five minutes after Lassiter passed.

Now, how long would it take to go through the open woods to the lake and cut Lassiter off? On this part of the case, Bridgman's testimony is without value — honest though he may be — because he knows nothing about it. He has not been in the woods for three or four years and thinks a man would meet with many obstructions. Topping, Day and Swindell, who examined the woods in May last, testify that the way is open and that the cow paths are running in every direction. Swindell thinks a man could go through at a rapid pace as soon as one could walk leisurely around the road, and Day says

there are many open places where a man might run. George Jarvis — whom Mr. Bryan chooses to call a mink, but whom, though poor and in humble life, there is no reason to disbelieve — who is hunter and woodsman and has been in those woods seven or eight times, says a man could go through from Carawan's to the two pines in three-quarters of an hour and to the schoolhouse in thirty minutes. Does he not know it?

Gentlemen, had the prisoner ample time to get through those woods? What was there to prevent him? He was a strong, athletic man and knew every foot of that ground. What can not such a man do in circumstances like these, when impelled on, as the prisoner was, by the deadliest purpose of vengeance?

But they say the witnesses differ as to time. Suppose a man should pass through a thickly settled neighborhood, or through one of the streets of this town, at three o'clock today, and every man should see him, how many would tomorrow agree as to the time he passed, speaking merely from recollection? Sawyer, who thinks Lassiter passed Carawan's at two o'clock, is as likely to be right as Bridgman, who thinks it was three o'clock. But, gentlemen, although the witnesses differ as to the time — and it would be strange, indeed, if they did not differ under the circumstances — still there can be no doubt that Lassiter dined at Bridgman's that day; that he passed the prisoner's house soon after on his way to the lake; that he stopped on the way at

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Brown's and Gibbs'; that he passed on towards the lake; that afterwards a gun was heard in that direction, and that Lassiter was shot on the right side and from that side of the road on which are the prisoner's house and the woods. Afterwards — and it is a most significant fact, gentlemen — the same kind of shot and the same mixtures of shot were found in one barrel of the prisoner's gun as were found in the body of Lassiter. I ask you if these facts do not, taken in connection with his subsequent conduct, satisfy you that George W. Carawan, the prisoner at the bar, committed the murder with which he is charged?

I have shown you, gentlemen, that the prisoner had both the motive and the opportunity to commit the act. It remains to inquire how we connect him more immediately with the fact of the homicide. I come to the testimony of Carawan Sawyer. He testified that shortly after Lassiter passed, the defendant went to the woods, his wife following after him with his gun concealed under her apron. She stopped at the woods and returned without the gun. The defendant went into the woods and did not return till sundown, and then without the gun. That night the defendant sent the witness to Bell's, and when he came back, some hours in the night, defendant was not at home and, so far as he saw, his negro man was not there. Where he was gone no one knew but himself and God. He has not in any way attempted to account for his absence that

night. Wednesday he took his hoe and went into the woods in the same direction he had taken on Monday. Saturday morning he sent the witness to Moore's for him to come to his house, and when the witness returned he told him that if he would swear he (Carawan) was at home all day Monday, he would give him the best negro he had. That evening he ran away, saying to the witness as he was leaving: "They have found Lassiter, and if I stay here, I shall be hung."

The witness who testifies to these things, gentlemen, is a nephew of the prisoner and has been his apprentice for ten or twelve years. What motive had he to swear away his uncle's life? There is no evidence of his having been drilled, no evidence that he has been under the tuition and control of the prisoner's enemies, as his counsel charged. Do they say that Ira Topping, with whom he has lived since last April, has suborned him? They dare not charge it. Can they put their finger on any man, can they name the man to whom they dare impute so horrible a crime? No, gentlemen, they can not. How, then, do they impeach him? By calling witnesses as to his general character? No; that they knew they would fail in. But, by attempting to show that his statements, made in various conversations, do not exactly agree with each other and with his statements here. This is a most insidious way of attempting to impeach a witness — to ask him if he did not have such a conversation with such a man

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at such a time and place. If he answers that he does not recollect it, Mr. Bryan proves it on him and counts that a perjury.

But see what they all amount to. The witness tells a tale probable on its face, and without hesitation. There is nothing in his appearance or in the character of his testimony to excite suspicion. Yet, notwithstanding the prisoner has his friends and spies to entrap him and get declarations from him which would make against him; notwithstanding he must have had hundreds of conversations on the subject; all they have been able to prove is slight variations in conversations with four witnesses only.

Mr. Moore tells you that he read to the witness the first part of the prisoner's note to himself and asked him if it was true that the prisoner was at home all day Monday, Tuesday and Wednesday, and the witness said it was. The witness does not recollect it, and, according to counsel, this is one perjury and the jury is bound to disbelieve the witness. I ask if it is likely that the boy was in the habit of contradicting his master? He was under the prisoner's direction and control and knew it would not do to deny what he had stated.

In the second conversation with Moore, which was just after the prisoner had fled, he began to correct his first statement. He does not now recollect this and, according to counsel, this is another perjury.

In the third conversation, he wishes to set himself

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right, but Moore reprimands him severely and prevents it. He becomes freer and freer every day, and when he is disenthralled from the influence of the prisoner, he tells the whole truth. Bridgman, the next-door neighbor, and Topping, his friend with whom he communicated freely, confirm his whole statement, except in a few particulars. The testimony of Israel Brooks is of no sort of importance, as he casually heard only a part of a conversation under circumstances when it was natural that the witness should evade inquiry, and, what is very remarkable, although Brooks pretends to quote the very words of the witness, he has a most astonishing oblivion of the names of the persons who were present at the time. We find variations in the statements of the best of men, and it is impossible, in a long narrative often repeated, to observe a precise uniformity of statement.

Now, gentlemen, how do we support this witness? Why, out of the mouths of their own witnesses, called expressly to impeach him. Topping and Thomas Bridgman, who know him best, both swear that he has a good character and is worthy of belief. Bridgman says he will tell the truth, but, "if bothered, he might make mistakes." And, gentlemen, was he not "bothered"? No witness was ever subjected to a more rigid cross-examination than he. No members of the bar ever saw a more studied or persevering attempt to entrap and confuse a witness. Yet, out of all the smoke and flame through

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which he had to pass, he came brighter than before, and all the denunciations and anathemas of counsel cannot affect him.

And how else do we support him? The prisoner, while in Hyde jail, made application to his nephew, Green Bridgman, to get the boy to go away. On being told by Bridgman that he was his bondsman, the prisoner asked if the witness could be got to leave if the bond was paid. What does this mean? They say he wanted to get the boy away from the prisoner's enemies, but there is no evidence that he was with his enemies. What, then, does it mean, except that the prisoner was conscious that the boy knew enough to convict him of the crime with which he had stained his hands, and he wanted to suppress his testimony?

What else is there, gentlemen? Look on these letters written by the prisoner immediately after he was placed in jail. Mr. Bryan has read them to you very pathetically and has told you that there is not much in them after all — that they show a mind crazed and distracted by physical suffering. But if the prisoner at the bar was crazy when he wrote those letters there was most remarkable "method in his madness." What is the construction to be put upon these letters and what was their object? To get rid of this witness, and nothing else. How do they read?

"If he will not leave, do otherwise. For God's sake let it be done before court in February."

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Let what be done?

"You do not live in the neighborhood, therefore you will not be suspected." "Tell Reuben, to try and get that foolish boy to leave, and, do you, my friend, go with him, and see that he is gone." "I then should not be so crazy."

Was it confinement that made him crazy? No, gentlemen. If the witness was gone, "I then should not be so crazy." It was a knowledge that Carawan Sawyer knew he was guilty of the crime, which made him crazy.

"If you try among the people there can be over \$1,000 made up directly."

Made up for what? Why, to get the witness out of the way.

"Five hundred dollars will hire him to leave, no doubt of it. I have directed Mary to pay \$500. Make up \$1,000 if needed, for God's sake."

"Be sure and do the main thing, to put aside that evidence by hook or crook."

That was the main thing — that was the purpose of writing these letters — to get rid of the witness by fair means if he could, but, at any rate, by means either fair or foul.

We introduce these letters, gentlemen, not simply to support the testimony of Carawan Sawyer, but as a distinct and substantial fact which goes to prove the guilt of the prisoner. The suppression of important testimony is always indicative of guilt. Gentlemen, if there were any testimony to impeach

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the boy, Sawyer, these letters support him with more strength and more emphasis than if the whole county of Hyde were here as one man to testify that he is worthy of belief. If the boy was perjured, if false in his statements heretofore, and false now, if he did not know the facts to which he deposes, the prisoner knew, if innocent, that the mystery which attended the murder of Lassiter would be cleared up and that perjury could not stand between him and justice. No, gentlemen, he knew he was guilty of that murder; he knew also that the boy, Sawyer, knew it; hence, his anxiety to get rid of him by hook or crook.

Let us now inquire, gentlemen, what was the conduct of the prisoner during the week succeeding the fatal Monday? On that day he got back to his house as soon as possible in order to be able to account for himself. He stays at home all day Tuesday for the same purpose. Between Monday and Tuesday he had changed his dress. The witness (Swindell) who testifies to this is called another perjured witness because he could not recollect what dress any other man had on whom he saw that day. It is not strange that he should remember the fact when it is known that in less than a week afterward Lassiter was ascertained to have been killed on Monday and the prisoner to have run away. See on what foundation they accuse witnesses of perjury!

Wednesday the defendant goes into the woods carrying a hoe in the same direction he took on Mon-

day, and was gone several hours. Mark you, gentlemen, Lassiter was murdered on Monday and buried on Wednesday. Thus, much of the prisoner's work was performed. He goes down to the lake to account for Lassiter, asks Day if he had heard anything of Lassiter that week and tells him that his folks had seen Lassiter pass his house on Monday with his clothesbag full of clothes, and, says the prisoner, "I am thinking he has cut out." "Oh, no," says Day; "I reckon he is down on the lake at Topping's or McGowan's." "No," answers the prisoner, "I am thinking he has cut out."

Bear in mind, gentlemen, that this is the first time it was intimated by any one that Lassiter was missing. The people on Rose Bay supposed he was at the lake, and the people at the lake supposed he was still at the Bay. What was, then, the prisoner's purpose? To suggest to the public mind, through his friend, Day, what the public had not suggested to itself, namely, that Lassiter had run away. He did not want any inquiry or search for him in Hyde County.

Now, take the conversation with Day in connection with the conversation with Simmons. Two of the prisoner's counsel did not think proper to notice it, and the other passed over it with most commendable haste. Simmons was a reluctant witness for the State. He saw the prisoner Friday night and told him the news that Lassiter was missing. The prisoner replied: "It is strange news to me." On Tuesday he tells Day that Lassiter had cut out,

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and on Friday he tells Simmons that it was strange news to him.

On Saturday he asked what the people thought of it. Simmons replied that the people thought Lassiter was destroyed. The prisoner then asked: "Who do you think will be accused of it?" Witness answered: "From all I can gather, I think the people will accuse you of it." What does the prisoner say when informed of a charge of that character? Not one word! Is this the conduct of an innocent man, to manifest no surprise, to make no protestations of innocence, when told that he was charged with murder? He did not seek any explanation, but passed it over without a syllable in reply. Gentlemen, it demands explanation. Let his counsel give it if they can, or any hypothesis consistent with his innocence.

On Saturday also he states to Moore that he expected to be accused of the murder, but that he was at home all day Monday, Tuesday and Wednesday. If he was innocent and wrongfully accused, why did he feel the necessity of accounting for himself on those days? Why, unless those were the very days he had employed in committing the crime and concealing all traces of it? None but he knew with certainty that Lassiter had been murdered on Monday; none but he knew that the work of burying the body was consummated on Wednesday. Is not such conduct consistent only with a guilty knowledge of the crime? There is no room for doubt.

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Now, what took place in the evening of that day? Moore goes to his house and carries him the news, which he had heard on his way, that the body had been discovered. The prisoner immediately flees, passes out of Hyde, through Beaufort County, and to God knows where, attempting, as he leaves, to bribe the witness Sawyer to swear to the very statement he had made to Moore.

Two months afterward he returned, it is true, but he returned secretly in the night and with no purpose of seeking an investigation or surrendering himself to justice.

Let us consider the time and manner of his flight. He stays at home on the night of the fatal Monday and is safe. On Tuesday he remains at home and is safe. Wednesday, Thursday and Friday he remains at home and is secure, believing that the precautions he had used had concealed the body of his victim from mortal sight and precluded all chance of discovery. He knew too well that, however strongly suspicion might fasten on him, however many might believe that Lassiter had fallen by his hand, the possibility that the deceased had left the county without being heard of would protect him, and that he could not be convicted of murder until the body was found. It is a humane rule of law not to convict for homicide unless the body is found, or at least most satisfactorily accounted for.

But on Saturday he hears that the body is found, and he instantly resolves on a secret flight. Ah! gen-

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tlemen, he felt he was safe no longer. Why? Why was it that he fled, then, but that he saw the mangled and bleeding body of his victim, and even his very garments stained and stiff with his heart's blood, rising up before his sight to testify against him?

The discovery of the body added the last fatal link to the chain of circumstances which surrounded him. There was no chance of escape but flight, and his flight was a confession of the murder. It was a choice between the felon's reward and the miserable life he might prolong if he escaped. On Friday and Saturday, during the progress of the search, he was uneasy and restless, but up to the time of finding the body he had preserved his usual appearance as far as a guilty man is able. His strong, thick-set muscular frame, his firm and steady nerve and his evident power of will enable him partially to control and conceal his emotions. But that fact unmans him and, in the language of the witness, he becomes "as white as ashes" and exclaims, "I must go away or I shall be hung." He becomes a coward and flies from justice. Nothing could have wrought such a change but the consciousness that his guilt was now apparent to the world.

It seems, gentlemen, that the conduct of the guilty man is always certain to bear witness against him. He feels that there is blood on his hands which nothing will wash out; the fatal instrument is present to his sight; the consciousness of guilt is ever with him, and he can not act as if he knew and

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felt it not. It is true — God, in the creation of man, in endowing him with a moral sense, has made it true — that

Murder, though it hath no tongue
Yet speaks with most miraculous organ.

Gentlemen of the jury, I think you can not fail to be satisfied beyond all reasonable doubt of the prisoner's guilt. If you are thus satisfied, your duty is plain. I know that the prisoner's counsel have appealed to you with all their energy and eloquence to remember his gray hairs, to respect the short remnant of his days, to regard his wife and children and to show mercy. If, gentlemen, it were your province to be merciful, I ask: Is the prisoner deserving of mercy? What mercy was in his heart, what sentiment of compassion was there, when on the public highway he coolly and deliberately took the life of his fellow man?

That mercy I to others show,
That mercy show to me.

That is all he can ask at the hands of this jury, who are now trying him, or at the hands of that God who shall try him hereafter.

Gentlemen, those connected with the prisoner at the bar deserve the sympathy of us all. But has it come to this, that, in a court of justice, your sympathies are to be invoked in behalf of crime? Has it come to this, that you must forget that you are ministers of the law; that you must disregard

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your oaths and let guilt go unpunished because you have sympathy with the guilty? Recollect, gentlemen, that sympathy is mistaken and false when it cajoles us into a neglect of duty; that it is unjust to itself when it countenances crime; that it is dangerous and criminal when it seals up the fountains of justice and thwarts the administration of the law.

But if justice permits sympathy, if it is required by reason or by any imperative law of our being, let it be directed in the proper channel. Let it be in behalf of the dead, who was untimely cut off. Let it be in behalf of him who was butchered cruelly without remorse.

There is within a day's journey of us, a bereaved family who mourn a son and brother, fallen not by the hand of disease, not on the bed of sickness soothed by the consolation of friends, but by the hand of violence, sent before his time, perhaps unprepared, into the presence of his God. Let your sympathies be for them, and not for him who has desolated their house and made them to sorrow all their days. Let not your sympathies be for him whose hand is red with the blood of his fellow man, whose heart is black with the deepest dye of human guilt.

Gentlemen, this is a case of no usual interest. Excitement has died away, but it has left in the public mind much of anxiety and apprehension. Men wish to know whether justice is to be meted out in its appointed tribunals. They wish to know

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whether the law is to be triumphant — whether it is to be administered in such a manner as to afford, as it was designed to afford, protection to human life. They wish to know whether the violation of the law is to meet its reward or whether the criminal is to be allowed to gorge himself with blood and through the instrumentality of a jury of his countrymen go “unwhipped of justice.”

I ask no verdict at your hands unless it comes from a well-settled conviction of the prisoner's guilt. But if you are so satisfied of his guilt beyond a reasonable doubt, then I do ask it in the name of law and justice. I ask it in the name of all who have lives to be protected or interests to be advanced by the support and enforcement of the laws.

Gentlemen, it is said that a sense of duty performed or of duty neglected and disregarded follows everywhere and always; that we can not escape from it without escaping from ourselves. Your action in this case, therefore, is important to yourselves. The events of this trial and your own final verdict in the case will be with you in memory both here and hereafter, as a source of gratification and joy or of misery and sorrow, according as you shall have performed your duty. I trust you will so perform it as to satisfy both your own consciences and the claims of public justice.

A few minutes after eight o'clock on the morning of November 30 the jury returned a verdict of guilty.

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The presiding judge ordered a recess for one hour, when suddenly the defendant was seen to jerk from his bosom a pistol which had been concealed, and to fire it directly at Mr. Warren, who had made the concluding argument against him. The ball struck Mr. Warren's coat but did no further damage.

Carawan was immediately seized, but before he could be disarmed he had sent a bullet crashing into his own brain, and in a few minutes was dead.

The defendant was fifty years of age and had been a popular clergyman for twenty years. Developments, however, indicated that he was a degenerate, that he had committed a number of other crimes, and was probably responsible for the death of his first wife, as well as that of a three-year-old illegitimate child born of a young woman he had seduced.

After the death of Carawan one of his slaves, who under the law could not testify against him at the trial, divulged the gruesome details of the assassination of Lassiter as Carawan had related them to him. The slave had helped the master bury the body.

The Trial of Richard Croker

IN New York City, on Nov. 3, 1874, the day of the National election, Abram S. Hewitt and James O'Brien were opposing candidates for Congress. Hewitt was the Tammany Hall Democratic candidate; O'Brien was the candidate of the anti-Tammany forces.

Richard Croker, Coroner of New York County, and a prominent member of the Tammany Hall organization, was in charge of the men who were to have supervision of the Tammany ticket distribution booths in a certain part of the city, and while he and the men under him were endeavoring to protect the Tammany booths against efforts being made by some of the O'Brien workers to destroy them, Croker became involved in a personal encounter with O'Brien. Pistol shots were heard, and John McKenna, some distance away, fell, wounded, dying soon after.

O'Brien said that Croker shot McKenna. Croker was arrested and at once made the following statement to the press:

At a quarter past seven I was at Thirty-fourth Street and Second Avenue, where I had gone to look after the

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regular Democratic tickets, as I had heard that there was a crowd of roughs to be brought there by James O'Brien to destroy the Tammany ticket and beat the Tammany men. I was met by Mr. O'Brien and his crowd and assaulted by him. Some words passed between us, resulting in a blow from him. With me were the two Hickeys and Mr. Sheridan; there was a crowd with Mr. O'Brien; they urged him to strike me. I only had words with him. I told him that all we wanted was fair play, and did not wish to have our men driven out of the district by thieves that he had brought there. Previous to this one of his crowd and his own brother, Larry O'Brien, had been arrested for assaulting our men. The fight was general, and shots were fired — some three or four. I don't know who fired, or what side they came from, but I did not fire, as I never carried a pistol in my life. The police came up, and I asked to have O'Brien arrested, but they refused. I do not know John McKenna, the injured man, nor do I know who shot him.

Croker was placed on trial for murder in December, 1874, in the Court of Oyer and Terminer of the City and County of New York, Judge George C. Barrett presiding.

The prosecution was conducted by District Attorney B. K. Phelps and Assistant District Attorney D. G. Rollins. Mr. Croker was defended by John R. Fellows, George W. Wingate and Henry L. Clinton, Mr. Clinton making the chief argument in his behalf.

Speech of Mr. Clinton

MAY IT PLEASE THE COURT — GENTLEMEN OF THE JURY:

I CONGRATULATE you that the time is near when you will be relieved from the imprisonment which you have been compelled to suffer in the discharge of your duty in the cause of public justice. I have never risen to address a jury under circumstances like the present, where I felt that my effort would be entirely a work of supererogation; where all the facts developed upon the trial were so conclusive upon the side which I was called upon to defend that it seemed an utter waste of time to delay the rendition of a verdict. And yet, gentlemen, as this is a capital case — or, rather, as the charge against this defendant is capital — counsel might be thought wanting in their duty did they not at least go through the form of presenting to you their respective sides by way of argument. As it is late in the week — late in the last day of the week — and I know how anxious you must be after a week's absence from your families to return to them, I shall only call your attention to a few of the principal points.

On Election Day, early in the morning, certain parties got together. We have not been permitted to — and perhaps it was not proper, in view of the

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course the case finally took, that we should — go into evidence to show you in detail the scheme concocted for the purpose of driving voters from the polls and preventing them from voting for the man of their choice for Congress. Yet we have throughout the evidence shown enough to enable you to readily understand what that scheme was; and in my observations I shall only allude to facts established by the testimony.

It does appear in evidence that certain parties met on the night preceding the election; they met at a nameless place. The object was to arrange for the operations of the next day. The first you hear of their movements on election morning is that those in charge of polling booths, those in charge of the boxes in Second Avenue, in the interest of a particular Congressional candidate, Mr. Abram S. Hewitt, whom you all know — and know favorably — by reputation or personally, were driven from the polls. Thus a system of violence was inaugurated. It has been proved that as early as seven o'clock Mr. Casey was driven from the polls. Scenes of violence occurred in the vicinity where he was stationed. It is shown in one case that one of the brothers of the opposing candidate for Congress took part, and in another instance another brother participated in acts of violence.

Who were those who on this occasion congregated for such a purpose? According to the testimony of the witnesses for the prosecution, they were such

men as Owney Geoghegan and others whose names you have heard. They assembled for the express purpose of violence. The character of the contemplated violence you may readily infer from the circumstances.

Coroner Croker, a prominent member of one political organization, in pursuance of his duty on the morning of election, went to that portion of the city, taking with him a number of men for the purpose of leaving them at the various polling booths where men of that organization had been driven away. When he arrived in Second Avenue, at the corner of Thirty-fourth Street, or near there, he had but three men with him — the Messrs. Hickey and Sheridan. He was in the peaceful discharge of his duty. But before I go to that branch of the case I will call your attention to a little of the evidence on the part of the prosecution respecting preliminary matters. It does appear, as I said, that Mr. Casey was beaten by Mr. Lawrence O'Brien, and for that offense the latter was arrested. It appears by the evidence of the prosecution that six or seven other men of the gang were with him at that time, and among them was Borst. He was one of those who were enacting these scenes of depredation and violence. Borst himself tells you that on that morning he took with him Costello, known as "Strong-armed Mike."

Now, gentlemen, you have, in the first place, Borst, Costello, and the rest of the gang in Second

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Avenue, near Thirty-fourth Street, engaged in acts of violence — inflicting violence upon peaceful, unoffending citizens, whose only object was to promote the interests of Mr. Hewitt and to secure the votes of citizens who desired to cast their ballots for him. You may infer from the evidence that Mr. Croker heard of these acts of violence. For the purpose of characterizing this proceeding, and showing you the kind of operations that were being performed, I will read a few lines from Stephen O'Brien's testimony. He says:

"I had that morning a little difficulty."

Question. "Where?"

Answer. "On the corner of Thirty-fourth Street."

Q. "With whom?"

A. "A man named Mike Geoghegan." (That is a little after seven o'clock.)

Q. "Did you have any disturbance that morning?"

A. "Not that I know of. A man by the name of Clifford, me and him had a little jaw."

Q. "Any blows struck?"

A. "Yes; I believe I tripped him — I believe I tripped at him."

I call the attention, gentlemen, to these preliminary circumstances for the purpose of justifying the action of Coroner Croker, which was peaceful upon that occasion. Mr. Croker, having charge of the men who were to have supervision of the polling booths in that part of the city, in the honest discharge of his duty, as requested (as you have a right to infer) by those whose business it was to

give directions in these matters, went to Second Avenue for the purpose of protecting the men who were engaged at the polling booths and at the boxes. He went there for the most peaceful purpose, contemplating no violence of any kind — a man who, as the testimony shows, never carries a pistol or weapon of any kind — Croker went there, and what did he do? He found there this man Borst, who had been engaged in the scenes of violence but half or three-quarters of an hour before in that exact locality.

Does Croker engage in any acts of violence with him? Not at all. Croker had a right to believe, and did believe, that Borst was the leader of this gang. Mr. Croker, thus believing, addresses him and says in substance, "You ought to be ashamed of yourself; you don't belong in this district; you should go away from here"; and he said to him further, understanding the meaning of the language, "You must take your thieves away." Now what did he mean? Mr. Croker said that in a calm, mild, gentle tone of voice, but with decision of character.

Did Mr. Borst and Mr. Costello resent this language? Not at all. Had they been there for any honest purpose; had the rest of the gang, including Geoghegan and the others, whom you have heard described by peculiar appellations, not been of the character indicated by Mr. Croker, do you believe Mr. Borst would not have resented the insinuation, or rather the direct charge, made by Mr. Croker?

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Does Mr. Borst say indignantly, "I have got no thieves here; I have had nothing to do with acts of violence; how dare you use such insulting language to me?" No, he takes it, and Costello takes it, quietly, as a well-deserved rebuke.

This language had peculiar significance. If the gangs of thieves had not been there for purposes of violence, do you believe these men would have submitted to such an accusation? You may infer they were capable of resenting it. A gang of six or seven, and you do not know how many more, had been there before — half an hour before; they were within beck and call — within easy reach. Croker had but two or three with him; but there were Costello — strong-armed Mike — and Borst, and we know not how many more, who were able to cope with Croker and all he might have near him. What is done? Mr. Costello does not resent the language of Croker. The conduct of Borst and Costello amounted to a confession that the charge was true. You have heard enough as to the character of the men engaged in these acts of violence. You heard one witness for the prosecution deny that they assembled at a particular place. You heard other witnesses for the prosecution admit that they did, that they were there, that they assembled at that place, that they departed from that place in various directions, and operated in a way to suit their own purposes.

Under such circumstances Mr. Croker, as I have

said, told this man Borst to take that class of men away. Was he wrong in that? Was not Mr. Croker acting the part of a good citizen? Is the doctrine to be inaugurated that if ruffians, for the purpose of electing a particular candidate, see fit to smash boxes and to drive innocent, peaceable men from polling booths, they shall be permitted to do so, and that citizens shall not be allowed to vote for men whom they desire to elect, or if they attempt to vote they shall do so at the forfeit of their lives? Are such scenes of violence to be inaugurated here? If such outrages are not to be permitted, what more did Mr. Croker do than he ought to have done? He expostulated with these men; he said to them, "Stop this course of procedure; it leads to prison"; he might have added, it leads to the gallows. He gave them kind, friendly advice; told them to go away. What followed? The men who had but half an hour before engaged in acts of ruffianism were not content; their appetites for violence were whetted.

They had driven many away from the polls; they were engaged in this nefarious business on that occasion. And what did they do? Did they depart peaceably? No. The Congressional candidate whose cause they were serving was near, and although he tells you he got on the car and went from between Lexington and Third Avenues to the corner of Second Avenue, and there got on another car, and from the platform of that car he observed Mr. Borst beckon to him, yet Mr. Borst said he was not

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upon the car when he beckoned to him. Why did he beckon to James O'Brien to come to that place? For the express purpose of precipitating violence. Borst brought James O'Brien to the scene of action. At this time Mr. Croker was performing the part of a peaceful citizen; he was not maltreating anybody; he was guilty of no violence; he was there in the honest discharge of his duties; he was performing them faithfully, kindly, and firmly. Why was it that these men who had been engaged in deeds of violence half an hour before called James O'Brien there? Mr. Croker was walking peacefully along; he had but three men with him; they had nobody knows how many; they had Croker now where they wanted him. What was Mr. Croker to do? He had been opposed to James O'Brien for several years; they had both occupied official positions in that ward. At one time they had been intimately connected with the same political organization. Was it Mr. Croker's business, when Mr. James O'Brien approached him and saluted him with a volley of epithets, to run like a coward? Was it his business to flee? Not at all. What does he do? He quietly stands still; he maintains his ground. When Mr. O'Brien poured forth a volley of epithets at him, he retorted in language somewhat akin to that used by his antagonist; he acted on the defensive. We would have selected choicer language, perhaps. O'Brien then struck Croker; the latter returned the blow with his fist.

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The District Attorney has conceded that he will not seek to hold Mr. Croker liable for any acts except his own, and therefore it will not be necessary for me to show at length, as I might otherwise have been compelled to do, the various acts and the course of conduct of those who were with him. Now, gentlemen, I ask you to bear this in mind at the outset, that by the confession of O'Brien himself and all his witnesses, O'Brien began this affray. Mr. Croker acted on the defensive, according to the testimony of the prosecution. What had Mr. O'Brien to do with Borst and strong-armed Mike and the rest of them with whom he rushed to the scene unless they were engaged in his work? Why should he interfere? Why should Borst beckon him? And when he had beckoned to him, when O'Brien could see that Mr. Croker was guilty of no violence whatever, why should Mr. O'Brien rush to the scene if it were not for the settled purpose of inaugurating violence?

But, gentlemen, the question presented to you here is: Did Coroner Croker fire the fatal shot which resulted in the death of John McKenna? That he did not appears from all the evidence in this case — even that of the prosecution when properly construed. Who swears that he did? Who is the man of all this crowd of witnesses to swear that Richard Croker fired the fatal shot? But one solitary witness out of something like thirty who have given their evidence before you, and the man who swears

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to it is the one who was likely to have been the most confused; who, if he intended to tell the truth, had the poorest opportunity for observation. Gentlemen, such is the testimony presented on the part of the prosecution. James O'Brien, who had been struck in the mouth, who was bleeding, as he tells you, and who, as all the witnesses say, was greatly excited, testified that at that moment, after Coroner Croker struck him, Croker turned around coolly and deliberately took aim at the head of John McKenna, and shot him down upon the spot. Every one of you knows, as far as any one can know from human evidence, that no such thing occurred.

As my friend and able associate said in opening the case to you, how could Coroner Croker perform an act like that? No one has called him an unkind man; no one has called him a dastardly coward, that he should turn from the foe who was reeling and staggering from his well-directed blows, and from sheer malignity aim a pistol at a man of whom he had never heard, whom he had never before seen, and slay him in cold blood. Why, if there were no other evidence in the case than that of James O'Brien, I would go the jury with entire confidence that upon his testimony alone they would say that such a statement was incorrect, that it could not by human possibility be true. Men act from motives. What conceivable motive could Croker have to aim at an inoffensive man and shoot him down?

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Who next swears aggravation into the case? Stephen O'Brien. He tells you that no other man on the spot could have shot McKenna. That is his argument. Then two or three claim that Mr. Croker on that occasion had a pistol. Costello and the boy Heally so state. One of the witnesses who did not swear that Croker had a pistol stated that he saw something shining in his hand, which, of course, meant a pistol. Now you have heard all these circumstances at great length; you have heard much about the position of those parties; you have had it proved by witness after witness that O'Brien and Croker were engaged in a combat — that they were clinched until after the fatal shot was fired. But in this connection I call your attention to only one witness. When a witness states a fact — a leading fact — which is not true, all the surrounding facts and circumstances will be so out of harmony with it that a jury cannot fail to see the truth.

Now we have a right to use the testimony of James O'Brien so far as it proves a part of our case, and were there no other witness our entire case would be proved by a single extract from his evidence, to which I call your attention. He says: "I had my eye on Croker, because he was following me all the time." In substance, he said, "I had my eye on Croker all the time, and Croker had his eye on me." Mr. O'Brien had forgotten for the moment the main fact he swore to — that Croker had turned from him and followed McKenna; that

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he had shot in the direction of McKenna; and yet, before he left the stand, whether on direct or cross-examination I do not remember, James O'Brien proved the entire truth of this defense. He proved that he and Croker were engaged together, each having his eye upon the other until after the fatal shot was given. He says, in substance: "Our eyes were on each other all the time."

Gentlemen, that is the truth! There is no question about it. Those two were the combatants towards whom all eyes were directed. They were watching each other, and I tell you that neither James O'Brien nor Richard Croker could have taken his eye off his antagonist during that affray without each changing his entire nature. Do you suppose that these men, in an affray of that kind, they being the leaders of opposing factions, at that time engaged in a personal encounter, interchanging blows with clinched fists — do you believe either would take his eye off the other until the affray was over? This, if I proceeded no further, is an end of the prosecution's case. James O'Brien has proved the truth of our defense beyond all peradventure. When James O'Brien states that which I have read to you, we have confidence in the truth of that portion of his evidence. It came out naturally. He did not perceive the effect of it.

Now what further appears here? There are certain features in the case which indicate the truth beyond possibility of mistake. In order to make a

case against Croker, it was necessary to swear that he was the aggressor. Mr. O'Brien tells you that he on that occasion was peaceful, that although he was struck in the mouth by Croker and the blood flowed freely, his lips being thus brought against his teeth, he did not resent it; that he backed away, quiet as a lamb, pocketed the affront, and called on the police for protection. Is there anything in this evidence which justifies you in the belief that James O'Brien did not stand up front to front with Croker? O'Brien tells you he did not strike a blow on that occasion.

What do his witnesses say? Every witness for the prosecution either says nothing upon the subject or states that O'Brien did strike. Costello says that he saw O'Brien strike Croker; after that they clinched. Downey, O'Brien's witness, says that O'Brien hit Croker. O'Brien is not supported by a solitary witness.

Gentlemen, there is not a scintilla of evidence in this case to make the prosecution even plausible, except the direct testimony of James O'Brien. There is not a particle of evidence, aside from the positive declarations of James O'Brien, that Coroner Croker inflicted any violence upon that occasion, except with his fists.

What more of aggravation is attempted to be sworn into this case? James and Stephen O'Brien both seek to make you believe that Croker not only had a pistol, but that he passed it to Hickey. One,

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if I mistake not, tries to make you believe that Croker put the pistol in his pocket. The evidence is conflicting as to the position of Hickey on this occasion. I think a preponderance of evidence shows that he was at a considerable distance from the scene of the affray; but on that fact I do not lay any stress in this portion of my argument.

Here, then, you have some of the leading features of the evidence on the part of the prosecution. Had we rested our case without calling a witness it would have been your duty to render a verdict of not guilty. But, gentlemen, this is not a case where we desire simply a verdict of not guilty. We intend to vindicate Coroner Croker — a foully traduced man. It would be better for this city if there were more men who, by all peaceful and lawful means, would see that frauds were not perpetrated upon the ballot box; that every unoffending citizen was allowed to go to the polls and deposit his ballot without interference, and that those who engaged in the interest of the respective parties — properly engaged in attending at the polling booths, distributing their tickets — were protected in the discharge of their duties. I repeat, as the case stood when the prosecution ended, there was nothing but the naked statement of James O'Brien even tending to implicate Coroner Croker; because if he had a pistol (which he had not) that would not have proved that he used the pistol and fired the fatal shot, any more than the fact that if some of the magistrates of our

city happened to be where an affray occurred and had pistols in their pockets it would prove that they were guilty of homicide. The argument would be equally good to convict any one who happened to be in the crowd, of assault and battery upon James O'Brien, on the theory that he had an arm and could have used his fist. Why, the prosecution have proceeded, not upon the idea that they must prove Mr. Croker guilty, but that if by any human possibility he could have fired that shot they would have him convicted and executed. Have they forgotten that it is their duty to prove their case, and that they must prove it by satisfactory evidence; not only by a preponderance of evidence, but by evidence which leaves no rational, well-founded doubt in the minds of the jury?

I will next call your attention to the conduct of the unfortunate deceased upon that occasion. Some of the witnesses knew McKenna. I will invite your attention to those witnesses on the part of the prosecution and defense who were acquainted with him, as well as those who had no previous acquaintance with him, but observed his course at that time. Borst says that "McKenna rushed at Hickey, and as he did I heard a pistol-shot, and saw McKenna take two or three staggering steps from the curb into the street, Hickey in front of him. McKenna retreated back and fell." He says, "Croker had one foot in the gutter and one foot on the curb." Now, Rourke, a witness for the defense, says he saw Mc-

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Kenna come from the northeast corner of Thirty-fourth Street and Second Avenue; that he ran for a man standing near O'Brien and Croker, and made a grab at him and missed; that he ran as fast as he could. Mr. Carr says that McKenna ran for a man who had a pistol.

Gentlemen, I think that is substantially the evidence as to the direction from which McKenna came and the direction in which he went. In respect to that there is something of harmony in the testimony of the witnesses on both sides. There is not a particle of evidence in the case rendering it even plausible that Mr. Croker ever knew there was such a man as McKenna in existence until after he fell from the fatal shot.

Who caused McKenna's death? It does not devolve upon the defense to prove that fact; yet, gentlemen, we have done it. And why? Because, while we are here to defend our client, my associates and I considered it our duty to put upon the stand all persons present at the affray whom we could get into court by compulsory process to state from their different points of view all they observed upon that occasion. We have been able to prove, not by name, because not even the witness, nor any one, so far as I am aware, had any idea who the man was, but we have shown to you that a person other than this defendant did shoot McKenna. It is enough for us to prove that Mr. Croker did not. Now what is the proof upon this subject? Two witnesses, Mr.

Carr and Mr. Rourke, testified that they saw McKenna go in a particular direction, and one of these witnesses says that he ran up apparently against a man who had a pistol. I think another man, possibly the same witness, says that he grabbed at that man, and that man fired a pistol and McKenna instantly fell. Now we have proved that that person, whoever he was, shot McKenna. We have proved it by the witness who saw him come from the north-east corner of Second Avenue and Thirty-fourth Street, and go in the direction I have named; we have proved it by two witnesses who looked on and saw a pistol pointed in the direction of his head; we have proved it by those who saw the pistol fired and observed that McKenna instantly fell. We have proved it by a variety of other witnesses — I will not stop to call them by name — who state that they looked in that direction, saw the shot fired and observed the smoke rise from that identical spot, or in that immediate vicinity, where the other witnesses tell you this man fired, and McKenna dropped. All the testimony shows that Coroner Croker was in a different position.

Gentlemen, are rules of evidence to be reversed in this court? Is the machinery of the law to be converted into an engine of persecution? Is an innocent man to be hunted to imprisonment or death, because he had the courage to manfully discharge the duties which private citizens ought always to perform? And are you to brand twenty

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or thirty witnesses with perjury because, without any interest on their part, they were brought into court, and before their God, told the truth honestly and faithfully?

What motive have any of these witnesses to testify otherwise than truly? You have seen them all; they have been subjected to a merciless cross-examination, and yet I could not say that I regretted it, disagreeable as it was to them, because it brought out in bold relief the truth of their testimony; it brought out the proof of their integrity beyond all question; for while they differed on unimportant details — as all the witnesses for the prosecution and the defense have differed — yet as to the main facts their evidence was entirely reliable. Gentlemen, a moment ago I asked what motive could these witnesses have? None at all. On the other hand, what motive has the one witness, the solitary witness who appears here and swears that he saw Coroner Croker fire the fatal shot? Does he not desire to get rid of such an adversary as Coroner Croker? What greater motive could he have? The effect of that upon his mind I leave you to judge.

Having shown you the incorrectness — to use a very mild term — of the evidence of the principal witness for the prosecution; having shown you that he is contradicted by all the witnesses and by the conceded facts in the case; having shown you that he was the aggressor in his fight — that he inaugurated it; having shown you that another man fired

the fatal shot, I will now proceed to another branch of the case, and although it is not necessary that we establish this position, yet, as it does appear from a preponderance of evidence, it is my duty to call your attention to it. Coroner Croker's position was such that even if he had had in his possession a pistol, he could by no human possibility have fired the ball which entered the head of McKenna. I will not take up your time by going into details, because it is not necessary; but if it were, if the case turned upon that, I would, even at the risk of occupying your time longer than I should desire, analyze the testimony and show you, from reliable evidence in the case, that Coroner Croker's position was such that from the fact that the left side of the deceased was towards him, the fatal wound could not have been inflicted by him where it was, namely, immediately over the right ear, two inches back of the ear.

Circumstantial evidence is sometimes more important than positive, for the reason that crimes are perpetrated in secret; and it is rare in regard to many crimes, that direct proof can be given. Forgeries, larcenies, burglaries are usually committed in secret; no eyewitnesses are called, and, therefore, circumstances which, dovetailed together, point to a certain conclusion, are of the very highest importance. Although the relative position of the parties is an important and a strong circumstance, which of itself would be conclusive in this case,

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because if there be any reasonable doubt as to the establishment of any one proposition which is necessary to constitute a link in the chain of evidence showing guilt, then the case of the people fails; yet in this particular case I shall not dwell upon this feature of it as I would were there not so much direct evidence upon the subject. Some of the witnesses for the defense locate McKenna south of Croker; and, gentlemen, it would be strange, indeed, in a case like this, if witnesses were not, some of them, mistaken in regard to the position of the deceased. Why? Because their attention was concentrated upon O'Brien and Croker, and, up to the time that McKenna fell, their attention was not riveted upon him, with the exception of a very few witnesses; even with respect to them their principal attention was fastened upon the two combatants to whom I have alluded. Therefore, it would be most extraordinary if the witnesses did not differ as to the relative positions of the deceased and Mr. Croker.

The learned Assistant District Attorney, who opened this case with marked ability, stated to you with entire correctness that in all cases of this kind great discrepancies necessarily appear in the evidence. He stated very correctly the reason why that feature always accompanies every case of this kind, and the more you think of it the more convinced you will be of the truth of that observation. It is confirmed in respect to the witnesses on the

other side and in regard to ours. Why? While witnesses observe the chief scenes — the principal combatants — the main facts transpire so quickly that their attention is not riveted upon the minor details. One stands in one position, another in another; one sees one circumstance, another observes other facts; one observes one thing and another something else; so it is always. I venture to say that if a startling fact of any kind were to occur in this room, if any one were shot down, or if any one fell to the floor from heart disease or apoplexy, and it were necessary to prove the circumstances surrounding the casualty, while witnesses might not differ as to most of the main facts, yet in regard to minor details hardly any two would agree in every respect. Bear in mind that these transactions at the time of this homicide occurred probably much quicker than the witnesses themselves supposed. I do not believe two minutes were occupied from the time the two combatants met until the fatal shot was fired; yet my opinion is not as good as yours, and may not be correct. You observed the experiment of my learned associate, asking a witness to wait until a minute had elapsed. Silence prevailed in the court room. Persons came in and went out. Various incidents occurred, and had any one of us been called to state how long a time had passed, I think we would have said three or four minutes, instead of one. It seemed a very long minute.

On the occasion of this homicide the principal

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facts transpired in a very short space of time. They were sudden, and therefore it is not in the least strange that there is a wide discrepancy in regard to the details of the evidence. Bear in mind, too, that the attention of these witnesses was all concentrated upon O'Brien and Croker, particularly concentrated upon them because the parties who knew them and saw them come together felt that there was danger of violence. It was a notable incident in that part of the city that they should come together. When blows were interchanged, and this fight was observed, then the eyes of all were fixed upon them more intently than ever.

Why is it, the District Attorney may ask, that the witnesses speak so positively in regard to the fact that neither Croker nor O'Brien — and they make no distinction between the two — had a pistol or weapon of any kind in his hand? Why is it? The learned District Attorney and his Assistant cross-examined these witnesses with great severity, as though it were an extraordinary circumstance that their eyes should be fixed upon the hands of Croker and O'Brien. It was not at all surprising. Those men were fighting with their hands, fighting with their clenched fists. The witnesses were looking to see if the combatants would strike more blows after one or two had been interchanged; and it was, therefore, the most natural thing in the world that they should observe just what they say they did.

Now, gentlemen, I propose to call your attention

to the fact that we have proved — it would have been enough if the prosecution had failed to prove that Coroner Croker fired the fatal pistol — we have proved by the most positive and overwhelming testimony that he did not do it.

The learned Assistant District Attorney said when he opened the case that if one man sees an occurrence and twenty or one hundred do not see it, why bring up the parties who did not see it to outweigh the testimony of him who did? Gentlemen, there is a rule of evidence that under certain circumstances affirmative testimony outweighs negative. Yet it has no application in a case of this kind. The elementary books on evidence lay down the rule that if two persons are watching to see whether a particular fact takes place, the evidence of the one that the fact did not occur is entitled to as much weight as the evidence of the other that it did. I recall the illustration given in the books that if two persons are listening to hear if a clock strikes, the evidence of the one who says it did not strike is as good as that of the other who says it did, because their attention is especially directed to that particular subject. But if one is watching to hear if the clock strikes and the other is engaged in conversation and pays no attention to the clock, and does not hear it strike, then the testimony of the latter would have little or no weight compared with that of the former.

Now take this case; it is not negative testimony; it is positive testimony upon which we rely. Why,

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gentlemen, at this moment I am engaging your attention; every one of you is listening to me, looking at me, and paying attention to the observations I make; suppose it should be charged a week hence, that at this moment I fired a pistol at my associate — shot him dead — and suppose, out of the vast crowd here one man alone should come upon the stand and swear to that crime against me, swear that he saw me deliberately aim my pistol, fire, and my associate fall dead at my feet; and suppose I should call every one of you, every man in this audience, to prove that no such fact occurred — yet, according to the argument of the Assistant District Attorney, the evidence of the man who swore to the fact that was not true would have to outweigh the evidence of all in this room. The proposition was so monstrous, when applied to a case like this, that I regretted that my learned friend stated it. I can hardly think he meant it in any sense that could by possibility apply to this case.

Now bear in mind that all these witnesses to whose evidence I am directing your attention were present, viewing Croker and O'Brien as intently as you are now viewing me, watching with intense earnestness to see what they did.

How is an innocent man to prove his innocence? One man alone comes on the stand and swears that in cold blood he shot down a peaceful citizen — one man alone, one solitary witness, comes and swears to that. And yet it so happens that upon

that occasion — in that immediate vicinity — there were scores of witnesses, many of whose names we have ascertained, who saw what occurred, and who come into court and prove by the most positive and conclusive testimony that the man charged had no weapon and did not shoot.

Why, gentlemen, I have never known a case, I have never read a case, there is no reported case in the books of this country or England, whence we derive most of our law — if you go back hundreds of years you will find no case — where, under such circumstances, any prosecuting officer has ever asked a conviction at the hands of a jury. Never has such a case arisen before; because the law is that even if there be reasonable doubt as to whether guilt has been proved, there shall be an acquittal. But here, where there is no doubt whatever, where the evidence within reach of the prosecution shows beyond all doubt that the man is innocent, yet, on the testimony of a solitary witness, a District Attorney — or a Grand Jury, I should say — indict a man; he is thrown into prison, compelled to herd with criminals until, after his long-continued demand and pertinacious clamor for a trial, he finally secures it. What a spectacle! where men by the score, citizens of the highest character, of every grade in life — the mechanic, the merchant, the experienced and distinguished boatman — men of all occupations, of every stripe of politics who accidentally happened there, prove beyond all peradventure that the man

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is innocent, that he did nothing but his duty; and yet the spectacle is presented of a prosecution asking for a conviction!

Gentlemen, I am thankful that the case is in your hands. We are devoutly thankful that we have been able to get a trial, even as speedily as we have; for this man asked no favor except that his case should be brought to trial before an intelligent and honest jury, who would be governed by the evidence and discharge their duties conscientiously. Gentlemen, our testimony is not confined to those engaged for one party or the other in this contest on Election Day. We have called all the friends and the opponents of every candidate to give their evidence before you. I call your attention to the testimony of that man whom you all probably know by reputation, a man of high character and integrity, Mr. John Biglin. He was present on this occasion, observed all that transpired; he was working in the interest of his brother, the present Republican member of Assembly. He was present at the scene of this disturbance, or in that locality, during the entire day. He witnessed the whole disturbance, having been upon the spot; having been intently engaged in looking at Coroner Croker at the time, he speaks from positive personal knowledge; he tells you that by no possibility could he be mistaken; under the solemnity of his oath he tells you that Coroner Croker had no pistol in his hand; that he did not fire the fatal shot, or any shot; and that the

man fell while Coroner Croker and James O'Brien were engaged in mutual combat. Bear in mind that this is a witness who does not belong to the party with which Coroner Croker is associated. He was summoned here by the prosecution, and called by us. Were there no other testimony here than that of John Biglin, I would be content to leave this case with you upon it alone. He cannot be mistaken. I was glad to see that the jury put such questions to him as they thought proper to elicit the truth. A number of you examined him with considerable detail; my opponent and I examined him thoroughly; and, gentlemen, I did not regret either your examination — I was thankful for it — nor the protracted cross-examination of my learned friend the District Attorney, because it brought out in bold relief the truth that this man Croker was innocent; that by no human possibility could he have been guilty of this offense.

I will not take up your time by going into a detailed description of the positions occupied by John Biglin and the parties at that time; you remember how near he was to them — close by them — within three or four feet of them; looking directly into Coroner Croker's face; looking directly at his hands at the time the fatal shot was fired; he tells you that Coroner Croker had no pistol, could not have fired without his seeing it, and that he did not fire. Bear in mind also, gentlemen, that witnesses observe with accuracy somewhat according to their mental

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discipline, habits of mind, and peculiarities. One witness may get confused in a scene of this kind, another may be cool. It must have been evident to you that Biglin observed with great coolness. You must have observed from his evidence that he watched closely what occurred; he knew both parties; he had been acquainted with them both for years, and, as far as I am aware — I think he so stated — he was on friendly terms with both. His relations with them now are friendly; he has no motive whatever to misstate the facts. I submit, therefore, that his evidence is conclusive.

He told you he was looking at Croker's hands; and in response to the direct question put by my associate he stated in substance that by no human possibility could that shot have been fired by Mr. Croker without his observing it. My associate asked him, "Could you see Coroner Croker and his hands as well as you see me and my hands at this moment?" And he said, most emphatically, "Yes." Now what more is wanted? To the same effect is the testimony of Matthew Rourke, who was standing on the southeast corner of Thirty-fourth Street and Second Avenue at this time.

Gentlemen, one remark on the subject of position will suffice. I should take up your time not only beyond what is necessary, but beyond what would be justified under the circumstances, should I dwell at any great length upon the positions of various eyewitnesses to this occurrence. While they agree

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as to what transpired, they differ as to the positions of the combatants. Witnesses for the prosecution and defense alike differed in that respect. You may readily understand why any of these witnesses may have been mistaken as to whether O'Brien and Croker, at a given moment, were precisely in front of the telegraph pole, whether they were farther down in front of the awning, or whether they had got in front of the oyster saloon, or in what precise position they were. Their locality in respect to their being in front of one place or another was not important in the minds of the witnesses. They saw what their relative positions were as to each other; they could not be mistaken about that; nor as to whether they had pistols in their hands. But I am free to say that any of the witnesses may have been mistaken as to the identical spot or portion of any particular building in front of which the combatants were at any precise point of time.

Now our witnesses, eyewitnesses of the occurrence, were in every possible position; some of them were farther north than the combatants, some farther south, some farther out in the street, some in front of them, some in rear of them, and they all told you one thing, that at the time the shot was fired — I say every witness who was there, and had an opportunity of observing — they were looking at the hands of Croker and O'Brien and saw that Croker had no pistol nor weapon of any kind in either hand.

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You remember the testimony of Carr. I will not repeat it. You also remember the testimony of David J. Daly, a very intelligent, clear-headed witness, who had been trained among the bankers of Wall Street, and who had occupied an official position under O'Brien when he was Sheriff. This man — a strong, ardent admirer and friend of O'Brien — was present on that occasion. This witness was acquainted with the parties; he was on the most cordial, friendly terms with O'Brien, was one of the best friends Mr. O'Brien ever had, one who had followed his fortunes for years, through good report and evil report, under all circumstances, in prosperity and adversity; a man of great candor and frankness; as ready to acknowledge his own failings as his merits. He was right upon the spot, looking directly at Coroner Croker; and, while not unfriendly to Coroner Croker, was acting in opposition to him on this occasion, acting in the interest of O'Brien for Congress. He tells you that by no human possibility could the pistol have been in the hand of Croker without his seeing it; by no possibility could Croker have fired the fatal shot without his knowing it. He swears that Croker did not shoot McKenna. The District Attorney cross-examined him, and he again affirmed that by no human possibility could Croker have done it.

If Coroner Croker fired this shot, then not only Daly, but Biglin and a host of witnesses we have introduced, have committed wanton perjury from

no motive whatever. They are disinterested so far as this case is concerned; and if they had any interest, if Biglin and Daly had any interest, it was on the other side. They agree in regard to the fact that Croker did not have a pistol, that he did not shoot, and I cannot tell you how many more witnesses unite in the same testimony, because I have not had time since the evidence closed, even to collect their names, but a vast number of witnesses testify that at the identical moment the shot was fired, and for a little while afterwards, O'Brien and Croker were actually clinched. Several of the witnesses, who cannot be mistaken, in corroboration of that fact, tell you that Croker dealt O'Brien a second blow after the pistol was fired. Beyond all doubt Croker was engaged with O'Brien at the time. Daly tells you that O'Brien said to the police officer, "Arrest that man"; and Croker said to the police officer, "Arrest O'Brien"; each charged the other with assault. Now had O'Brien at that moment supposed, or thought it possible, that Croker had fired the fatal shot, he would then have charged him with it; but he did nothing of the kind.

Then again, you remember that nearly all the witnesses state that they distinctly and positively recollect that at this identical time Officer Smythe had arrived on the scene. Some say that before blows were exchanged he put his hand upon the parties, or upon one of them, with a view to part

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them. Others assert that when blows were exchanged, and before the shot was fired, he arrested them, or at least endeavored to separate them. Some, I believe — a very few — state that this occurred just after the first shot was fired, but the great bulk of the evidence is that it occurred before. He tells you himself that he arrived there before the second shot was fired; that he immediately arrested Coroner Croker; and he tells you furthermore than he kept his hand upon him from that time until he lodged him safely in the station-house. Now here is the testimony of this police officer — certainly not in our confidence — a man who secured his position through the influence of O'Brien, whose interests are all the other way; and yet he comes here, no willing witness on the part of the defense, with all his interests in favor of O'Brien, his benefactor, and tells you that Coroner Croker had no pistol in his hand; that he arrested him instantly after the first shot was fired; that he searched the pockets of his overcoat on the way to the station-house; that the Coroner was thoroughly searched when he reached the station-house; and while weapons were found upon two of the other persons, none were found upon him.

Gentlemen, I have hurriedly reviewed this case; I have gone over it more rapidly than I should had I thought there was any necessity for dwelling at greater length upon the details of the evidence. I

shall not advert to the various discrepancies of different witnesses upon immaterial points. I charge nothing against witnesses on either side on account of such discrepancies. I have sought to direct your attention to the main features of the evidence; I have endeavored to present it before you fairly. You have given this case great care. The jury themselves, to their own satisfaction, have sifted the witnesses most thoroughly, from an honest and determined desire to get at the truth, and to decide in accordance with the evidence.

I have established — or rather the evidence establishes — the following propositions:

First. The defendant was in such a position he could not have shot Mr. McKenna.

Secondly. He had no pistol.

Thirdly. It is proved that another man shot the deceased.

Fourthly. It is positively proved by numerous respectable eyewitnesses, who testify from their own personal observation, that the defendant did not shoot the deceased.

If, instead of these propositions being proved by the evidence, as they are, there were any reasonable, well-founded doubt in regard to any of them, or in regard to any proposition which it is necessary to establish on the part of this prosecution, it would be your duty to acquit.

Or I might phrase the doctrine in regard to doubt better by saying, if there be any reasonable doubt

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arising upon the evidence, within the rules of law, whether the prosecution have proved that Mr. Croker shot the deceased, it would be your bounden duty to acquit; for the law holds in its kindness, in its humanity — aye, in its keen sense of justice — that it is much better that the guilty escape than that the innocent be convicted and suffer. Yet in this case I have demonstrated to you beyond all possible doubt — beyond all peradventure — that this man is as innocent of this offense as His Honor upon the Bench, as any one of you, as any one of my learned adversaries, or any of my associates, or myself.

I now, gentlemen, with entire confidence, thanking you for your own kind attention, submit the case of my client to you. I have done my duty. 'Because Richard Croker performed his duty he has been immured within the four walls of a prison. For this, the honest discharge of duty, day after day, night after night, week after week, has his incarceration been prolonged. Soon you must perform your final duty in this memorable case. God grant that the time may never come when any of you, for the honest, fearless, faithful performance of duty, shall suffer martyrdom as has this defendant. At all times, in all emergencies, on all occasions, the only safe guide in all the varied relations, the ever-shifting scenes of life, is the God-given monitor within every man's bosom — conscience. This side the grave there is no luxury of enjoyment

like that of conscience clear and a sense of duty performed. Better, far better, imprisonment within the walls of yonder dungeon than the doom of the man who on the witness-stand rolls perjury like a sweet morsel under his tongue.

Because this defendant, when dangers thickened and ruffianly violence was let loose, performed only his duty, he has been torn from his family and cast into prison. Gentlemen, I envy you the happy moment so soon to arrive when your verdict will restore him to that young and loving wife who so recently gave birth to a son — her first child — when the idol of her affections, the partner of her joys and sorrows, was kept from her by bolts and prison bars.

Aye, gentlemen, you can never know the suffering, the agony, this young husband, in silence in his prison cell, endured, when, in her critical condition, he feared her spirit was hovering between life and death, and he was debarred the dear privilege of ministering to her wants and watching over her with that tenderness and devotion inherent in his nature. Well might he exclaim:

“Give sorrow words; the grief that does not speak
Whispers the o’er-fraught heart, and bids it break.”

His father, aged and blind, awaits the deliverance of this defendant. Whoever has watched this trial cannot fail to discern his innocence. Throughout the entire evidence the truth of this defense is:

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“So well apparelled,
So clear, so shining, and so evident
That it *must* glimmer through a blind man’s eye.”

Gentlemen, only the defendant is wanting to complete the family group. The loving wife, the young mother, the infant son await the coming of Richard Croker. The lesson taught by your verdict will sink deep in the public mind. Let it be known and read of all men, let it be everywhere understood, that, come what may, a New York jury dare, and under all circumstances will, do their duty.

The jury deliberated twenty-four hours but could not agree and a mistrial was declared.

Subsequently the District Attorney became convinced that Croker was innocent and the case was dismissed.

Mr. Croker afterwards became the recognized leader of the Tammany Hall Democracy.

Mr. Clinton, writing of him in 1897, said that “He was the shrewdest, most far-sighted, the ablest, most popular and successful leader Tammany Hall has had within the last forty years.”

To this it may be added that no true and complete history of party politics or political parties in America can ever be written with Richard Croker’s name left out.

The United States *versus* *Abrams et al.*

WHILE the World War was in progress, and shortly after the United States became engaged as one of the participants, the American Congress passed, as a war measure, what was known as the Espionage Act, which, upon being approved by the Chief Executive, became the law of the land.

This Act, as afterwards amended, prohibited, among other things, the entering into a conspiracy to utter, print, write or publish any disloyal, scurrilous or abusive language about the form of government of the United States, or language intended to bring that form of government into contempt, scorn, contumely or disrepute, or language intended to incite, provoke or encourage resistance to the United States in the war, and also prohibited the conspiring by utterance, writing, printing or publication, to urge or advocate curtailment of production of military supplies, necessary and essential to the prosecution of the war.

In October, 1918, at New York City, in the U. S. District Court for the Southern District of New

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York, over which Judge Henry D. Clayton was presiding, Jacob Abrams, Samuel Lipman, Hyman Lachowsky, Hyman Rosansky, Gabriel Prober and Mollie Steimer, the last named being a woman but twenty-one years of age, were tried for a violation of this Act. The trial was a notable one.

The defendants were Russian aliens and had printed and distributed certain leaflets which, the Government contended, offended against the law.

The defendants claimed as their primary object the arousal of public opinion against military intervention in Russia, where, it seems, some American forces had already landed, but against which no declaration of war had been made by the Congress of the United States.

The defendants denied bitterly any insinuation that they were pro-German, asserted that there was no criminal intent on their part, that they were exercising rights and privileges guaranteed by the Constitution, and that the acts charged against them did not constitute a violation of law.

At the trial Messrs. John M. Ryan and S. L. Miller represented the Government. Opposing them was Mr. Harry Weinberger, representing the accused.

The defendant Prober was acquitted. Rosansky, who practically became a Government witness, was convicted and sentenced to three years in prison. Mollie Steimer was convicted and sentenced to fifteen years' imprisonment and to pay a fine of five

hundred dollars. The other defendants, Abrams, Lipman and Lachowsky, were each convicted and sentenced to twenty years' imprisonment and to pay a fine of one thousand dollars.

An appeal was taken to the U. S. Supreme Court, and there, on Nov. 10, 1919, the judgments of conviction were upheld, Justices Holmes and Brandeis, however, dissenting.

On the following pages will be found Mr. Weinberger's speech to the jury, the majority opinion of the U. S. Supreme Court, written by Justice Clarke, and the minority opinion, written by Justice Holmes.

Mr. Weinberger's Address to the Jury

IF THE COURT PLEASES, AND GENTLEMEN OF THE JURY:

THIS trial has been long. It has not been the ordinary kind of a trial. Many times during the trial I had one opinion of the law of evidence and the Court had a different opinion, and I expressed it in my way, and urged my claim in my way. The Court acted in its way, and expressed its personality. Just the same as any act of mine, of course, cannot prejudice my clients in your eyes, any act of the Court, any ruling of the Court — and the Court will so charge you — is no expression of the Court's opinion as to the guilt or innocence of any or all of these defendants. The Court will charge

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you that you are the sole deciders of the facts and the law, after he tells you what the law is. You will have to apply that law, and after all, gentlemen of the jury, you are the last bulwark of the defense — of any defendant, in any court, at any time.

This right of trial by jury is not a simple one. It is not an unimportant one. It is one of the greatest rights that the American people have. Back in the old days of England, where we got most of our laws, there used to be a Judge by the name of Jeffreys who used to take his jury system with him of hand-picked jurors, and then he would find the man guilty and direct the jurors what to do, and heads were chopped off, and men were sent to jail, without really being given their day in court. Further back in English history we had juries who found men guilty, without law, without rhyme, and without reason. We find kings sending men and women to jail for having ideas, or having thoughts on any question, whether religion or economics, or against the divine law of kings.

Where towns are big, you cannot know the defendants, but the original purpose of a jury was that the jury would know all about the case, and know all about the evidence, and could decide the facts themselves, and that right was fought for on the battlefields of England.

Then we find, even with those rights won, in many parts of Europe men did not have freedom. They did not have the right to worship God as they

thought God ought to be worshipped. They did not have the right to print the truth as they saw it. They did not have the right to print and say the things they saw were wrong. Gutenberg invented the printing press, but men found themselves without liberty and without right to print. So when Columbus came sailing to the West, looking for a short way to the East Indies, to find gold and riches, and found America, a new land, thousands and millions came to this country. They found virgin soil. They found that they had economic independence; that every man could go out, if he had the physical ability, and earn a living, and get the full product of his toil. These men were free men. When the king back in England said he was going to tax them without representation, and they could not do this and they could not do that; when they found that men were being taken away from America across to England for trial, the spirit of revolution awoke in America, and we find Patrick Henry thundering in Virginia, "Give me liberty or give me death."

We find Otis, another lawyer, thundering against what was known as the writs of assistance, in a little two by four room, against the tyranny of kings, and then for eight bloody years we had war in this country. It was not all one-sided. There were many people in this country who fought on the side of England. There were many people who were against the Colonists. In addition to those men who fought here, the English king brought the Hessians

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from Germany, that selfsame system of bold crooks standing together for the things they wanted.

But America was three thousand miles away, and the mountains and the rivers and the dales were too big a territory, and Washington would always attack and retire, attack and retire, at Trenton, Valley Forge, all of the places where all the time liberty was being fought for, and then finally came success to them and they made a Constitution, and one of the biggest rights in that Constitution, even bigger than the right of free speech, was the right of trial by jury, for there shall never be a conviction in the United States courts, without a jury first passes upon it.

You represent the neighbors of old. You represent the last bulwark that must be overthrown, before autocracy and despotism can send men to jail. The right of free speech was written into the Constitution, as well as the right of free press, the right of public assembly, the right to petition Congress to pass any and all laws, and also to repeal any and all laws; the right to object to any act of the Executive and any act of Congress, and to bring to the bar of public opinion any official of our country. It was not in the original Constitution, it was not in the Articles of Confederation, which was the first Constitution this country had, but after the Constitution was adopted. The Constitution was only adopted, however, on the promise that there would be ten amendments, and the very first

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one was an amendment for the right to free speech and free press, and the right to bring to the bar of public opinion every single official, every act of government, every act of any part of our government, from the Judges on the bench to the Marshals, way up high to the Commander in Chief of our Army and Navy, in his capacity as such, and as President of the United States.

Those are the things that the people fought for in 1776. They knew the history of autocracy. They knew the history of despotism. They were men who were well read. Thomas Jefferson knew the struggle for liberty, down through the ages, and so did Washington, and so did Henry, and so did Morris and Adams, and those men wrote those things into the Constitution.

So you see, gentlemen of the jury, the President may become a despot. The Court may, in its autocratic power — and it has powers that must be autocratic — may desire to send defendants to jail; police may beat up defendants for the purpose of getting evidence from them, but these defendants and no other defendants can ever be sent to jail until twelve men unanimously say they must go to jail.

The Court will tell you, gentlemen of the jury, not only must it be the twelve to vote, but it must be the twelve consciences — your judgment. If each and every one of you, except one, should think these defendants guilty, and that one should say, "My

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conscience and my judgment is that these defendants have not violated the law," these men cannot be found guilty, because it will be the duty of that one to vote "No," till doomsday comes, and that was your oath of office, and that is the history of the jury system, and that is why I am here today, feeling that I can rely upon your consciences, upon your judgment, and that if there is a single one of you gentlemen who may feel that these defendants are innocent, it is your duty to vote that way.

The Court will probably charge you that even if you should think that it is for the absolute best interests of the United States that these defendants go to jail, it will still be your duty to vote not guilty if they are innocent, because America stands for liberty, and without liberty and the right of trial by jury, and a fair trial, America is no more, and is not worth while saving.

You may think that these defendants are unimportant. Five young men and one young girl. If you look back over history, that same feeling was always present in every trial where some one was convicted: "Why, these men are not important."

You can go back to the days of Egyptian tyranny, when they made the Jews make brick without straw, and Moses, though he was under the adoption of the Princess of Egypt, had to flee, because he also objected to the third degree, and he struck one of those men who applied the third degree. He struck him so hard that he died. He did not use a black-

jack, however. He had to flee from Egypt — flee for his life — and yet the day came when he led those Children of Israel out of Egypt into the promised Holy Land, where men are battling today for what they believe is liberty and democracy for the world.

Then we have a story of that promised land being found. We find the young men coming up, attending the Hebrew school, and studying the Talmud, as Abrams said he did in Russia. We find One, going to the Temple, finding that money changers under the law were using the Temple for barter and sale. With a whip He scourged them out of the Temple, and then He preached sermons, and then He preached against the sinners, and then He preached against those in control of the government, and pointed out their evils, and then we see Him tried, tried because His ideals and ideas were different from those in power, and we find the selfsame kind of a Court as this, and the selfsame kind of a District Attorney working for a conviction and getting it.

We find the mob out in the street calling for His blood, and when the mob was asked, "Don't you want this man free?" because they had the right to have one man free, they said, "No, give us Barabbas," a well-known thief and a well-known murderer, "but let Christ be crucified."

Unimportant He was, against the majority opinion of the times, against the government at that time,

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contrary to the opinions of the District Attorneys of His day, and He was crucified, and His thought, back in those days of Judea, has been changing the thought of the world.

We find when we come to Athens, the same thing happening. We find a teacher, Socrates, who had fought and was rewarded for bravery in battle, saying to the young men of Athens, "Ask questions." They question the authority of the things that were done, question the motives, asking, "Is this right?" They tried him also by a jury, and they convicted him — unimportant — and they made him drink the hemlock, and the thought of Socrates has changed the thought of the world; and after he was dead they built statues to his memory, because he was ahead of his time, even though his opinion was different from that of the majority, perhaps, or at least the majority in control of the Athenian government.

Come across to Europe and we find this selfsame thing. One of the greatest philosophers Europe ever produced, or perhaps that any country ever produced, was a writer by the name of Spinoza, whose thought has changed the critical thought of the world, and because he would not go to synagogue on the Sabbath, and because his ideas were just a little bit different from that of the orthodox Jews, the Jews threw stones at him, and he said, as did Christ, "Forgive them, they know not what they do."

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So you find at all times, gentlemen of the jury, we find down from the opening of time, that the world does move. We find men burnt at the stake for their opinions. We find in Spain that the streets ran ankle-deep with Jewish blood. We find the Spanish Inquisition, making men say they believed in a certain church, whether they did or did not. Always unimportant individuals. Always that small minority, questioning what those in authority do, and paying the penalty, because men are bound to do what they sincerely think, whether governments, or autocrats, or despots, or kings want them to or not.

Even in America whose history we all so love, because, whatever our mistakes in history, we know that down fundamentally America wants, always, justice; that the heart of the majority of the people is always on behalf of justice; and what do we find? We find John Brown in history, mistaken in a good many ways, thinking to free the slaves of the South by insurrection, by putting guns into their hands, and we find John Brown tried and hung.

They thought they had the slavery question all settled. We find Lovejoy printing papers against slavery—human slavery. We find his printing press thrown into the river, and then he is beaten and shot and thrown in afterwards. They must have had “intelligence bureaus” of the kind that we have today. We find Garrison, in Boston, talking on behalf of liberty for human beings in Amer-

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ica, dragged through the streets of Boston at the end of a rope by a broadcloth mob.

We find that jailing, that killing, that dragging through the streets, never finishes any question and never settles any question. Any opinion whatsoever can always be combated by another opinion. Any statement of facts can always be combated by another statement of facts — and then the submission of the evidence to prove the truth.

We attempted here to prove that the Sisson documents were forgeries. We attempted to prove that the Bolsheviks were not pro-German. We attempted to prove that they were really pro-Allies and against German militarism, German autocracy, and that these defendants, in giving out these leaflets, were standing with the Bolsheviks for liberty, and not for militarism.

We could not go into the detailed history as to what was really happening over there in Russia, but we did have two witnesses at the head of the Red Cross here to tell us. We had Mr. Williams, who had been all over Germany and Russia, but you gentlemen of the neighborhood, you gentlemen that sit here in the jury box, you gentlemen can go back to your old rights, the right to take questions back in history, and facts, and decide those facts as to what is true, and then apply them to this case. You know how to read. You have a right to use that right. You know how to think, and you have a right to use that ability.

You have read the President's speeches. You have read his messages on Russia. You also know that there is an American army in Russia at the present time. You know, and it has come out in the evidence, that only Congress can declare war, and that then only can the President, as the Commander in Chief, proceed to send an army to make war. You know that we did not know in this country that an army was being sent to Russia. All we heard was that an economic commission was being formed, and that assistance was being sent to Russia, to help the Russian people in reference to their railroads, in reference to their food, in reference to all kinds of questions of mining and transportation; and the next thing we knew, Japan was talking about sending an army to make a battle-front on the Eastern front. As a matter of fact, the army was in Vladivostok long before we ever heard of it over here. The next thing we knew, we found there was an American army in Vladivostok. We found that an army was at Archangel, an American army, without Congress ever declaring war.

I do not question the sincerity of the President. He may have some reason that you and I do not know, but we must judge public men by their public utterances, their public acts. On this question of international right, these defendants had the right to question and protest against any army being sent to Russia to fight the Bolsheviks. They had the

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right, not because they are American citizens, because they are not, but because they are here, and free speech is guaranteed to all, citizens and non-citizens.

What is the truth? What is it that makes governments try to shut the mouths of those who protest? What is it that makes the government bring an indictment, and four counts at that, against defendants who say it is wrong to send an army into Russia? Are we so poor, are we so weak, are we such cowards, that we fear the truth, or the question of truth? The very man who was attacked in these pamphlets said:

"The only thing that ever set any man free, the only thing that ever set any nation free, is the truth. A man that is afraid of the truth is afraid of life. I have such an inviolate confidence in the ultimate triumph of the truth, that I feel with old Oliver Wendell Holmes, that the truth is no invalid; you need not mind how roughly you handle her, she has got a splendid constitution, and she will survive every trial and every labor."

It is always these underlings, these intelligence bureaus, these men with a little power, who abuse that power; these little doggies sent out on the scent of what they think may be a crime, and feel that they must deliver the goods. This Police Department — these men formerly of the Police Department — took these five defendants and this little girl and ran them through what is known as the third degree. Do you really, honestly and truly

believe that they had these defendants for three or four or five hours, until the early morning, and all they did was just ask question after question, or do you believe that when these defendants would not tell them where the pamphlets were printed, and where they were gotten from, that having them in their power they beat them to make them say where they came from? They would not tell. The Department did not know, and when Barth went on the stand, I made him say he did not know until the Monday following. He did not get it that night. He did not know where that printing plant was, and they found five men and one little woman defying them, refusing to tell their majesties, kings of the intelligence bureau, where the pamphlets came from, and they *beat* them there, gentlemen of the jury.

You are too much experienced as American jurymen and American citizens, not to know that every detective, when he took that stand and said he did not know anything about beating them — they were never beaten — you know, I know, the Court knows, the District Attorneys know, and the Intelligence Bureau knows, that they *lied*. But these boys who took the stand, and this girl who took the stand, told you that they got out those pamphlets; that they knew all about those pamphlets.

These boys face four indictments and a probable sentence of eighty years; they are not telling a

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bald little story about being beaten up. Do you think that Molly Steimer would lie? Did you hear her frank statements as to her beliefs? Did you see her tell the story? Did you see the way she answered the Court? Do you think she lied? Do you think Abrams lied? Do you think Lipman — who said he wrote these things — do you think he lied? Is not the mark of truth on the face of every one of these defendants? They are not the ordinary kind of individuals, not the kind that come into court and say, "We did not do what we are charged with doing." These defendants tell you they did do what they are charged with. That is, they did do the act, but they deny that the act was a violation of law. They say under the right of free speech they had a right to say these things. They say under the right of free press they had a right to print these things, on behalf of liberty and justice they had a right to bring the President of the United States to the bar of public opinion, and their opinion is not the only one on that.

I now read from Cooley, the greatest authority in this country on Constitutional limitation, 7th and last edition, page 604:

"In the famous Virginia Bill of Rights, written by Thomas Jefferson, he said that the freedom of the press is one of the bulwarks of liberty, and can never be restrained but by despotic government."

The Declaration of Independence says that it avows its "decent respect to the opinions of man-

kind," and you could possibly, under no circumstances, have that opinion of mankind, without having the opposing opinions on both sides. Can you ever get the truth in wastes of silence?

The greatest right in the world is the right to be wrong; because when our neighbors, the Government, the District Attorney, and the Judges and the Intelligence Bureaus think we are right, they never interfere with us, but as soon as they think we are wrong, then comes the old Spanish Inquisition; then comes the old third degree, or the new Spanish Inquisition, brought down to date, and then comes the penalty of eighty years in jail, to make you conform to what the majority think you ought to believe.

Is not one of the finest poems in our language, written by an American, "The Man with the Hoe"? We are not brothers to the ox. We always have felt that, and Americans in the past have acted on the right to differ with anything the Government did, any law the Government passed. We always felt that we had the right to ask for the repeal of any law; the right to criticise any act of the Government.

At the time of the Mexican War, there could not be two sides as far as race was concerned. We could not question a man's loyalty and patriotism by merely calling him pro-Mexican. It was only a question of right or wrong in the Mexican War. We find Lincoln, Sumner and Phillips, all bitterly

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criticising President Polk on going into that war. The language of Webster is as bitter as anything these defendants wrote.

In England, at the time of the Boer War, who was the wild-eyed radical who stood on the soap-box, on the platforms, and denounced England? Why, Lloyd George, now the Savior of England, denouncing England in the Boer War, denouncing imperialistic designs, denouncing the power behind the throne, denouncing the King, denouncing the Prime Ministers. Today he is the Prime Minister, and did not go to jail.

These defendants also denounced and honestly denounced the attacks on the Bolsheviks; honestly denounced the invasion of Russia; honestly believed that the Bolsheviks stand for the salvation of the ordinary man, and they attempted to put before the people what they believed to be the truth—and are we afraid of the truth? Are we afraid to inquire what side truth is on? What did even Lincoln say about that? At the time of the Civil War he said, "Let the people know the truth, and the country is safe." Yes; safe for liberty, safe for democracy.

The words of these defendants were bitter. These defendants are plain people. They cannot write perhaps as you do. They do say that the capitalists are running the Government. It has been said before. I will adopt the words of one man:

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"The masters of the government of the United States are the combined capitalists and manufacturers of the United States. The government, which was designed for the people, has gone into the hands of the bosses and their employers, the special interests, and an invisible empire has been set up above the form of democracy."

I think you have heard those words before. Woodrow Wilson said that.

Now, on this question of revolutionists, you have heard this language before:

"We stand in the presence of a revolution, not a bloody revolution — America is not given to the spilling of blood — but a silent revolution, whereby America will insist upon recovering in practice those ideals which she has always professed, upon securing a government devoted to the general interests and not to the special interests."

Woodrow Wilson said that.

The pamphlet these boys gave out was calling upon the workers of America, the people of America, to save the workers' republic of Russia. Are they making mistakes in Russia? We make mistakes here. Did we make mistakes in the American Revolution? Did we make mistakes in the Civil War, in not doing away with slavery by buying the slaves their freedom, as England did? We certainly did. Did France make mistakes in her revolution? She certainly did. Didn't she have to kill counter-revolutionists? She certainly did.

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Mistakes are being made, but at least the peasants are getting back their land. Poverty is being abolished. Those are ideals that you and I have, though you and I may not believe that the way to get them is the way perhaps the Bolsheviks are getting them; though you and I may not believe that under a system of society known as Anarchy we could get them.

What is an anarchist? This idea that has always been brought before you about the bombs of the anarchists! We know a good deal about those bombs and what the police use them for; for frame-ups time and time again. We know what they do with pistols. What is anarchism? It is a theory of society of men and women working together, coöperating, of their own free will, without the compulsion of intelligence bureaus, or District Attorneys, or Courts, or jails, where every man and woman would have enough food, and enough shelter; where men will live as brothers, where each one will do unto the other as he will want the other to do unto him; where shelter will never be vacant, when some one is looking for shelter; where hunger will never walk the streets, looking for jobs, while wealth spends money in ostentatious living; where men, women and children will not die for ice and milk, while millions are spent on monkey dinners; where we will have a new humanity, industrially free, economically free; where real liberty will hold.

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You and I may not think that this is possible. We think we always need a policeman, if not in sight, somewhere within call. Even though you and I may have lived in small towns, where we never saw a policeman, and never saw a sheriff, and never saw the Judges and did not care about the District Attorney — you and I may think that is impossible in a big city like New York — the idea that with all the vast and multitudinous things the government has to do, it cannot be done by merely a group getting together; but at least that is the dream of some of these defendants, and that is also the belief of some of the finest thinkers of this country, to Kropatkin and Bakunin in Europe. They had beliefs. Were they sent to jail for it? Kropatkin, when he escaped from Russia because of his attacks upon the Czar, and his wanting to overthrow the Czar, went to England as a place of exile, and lived there for a great many years, and published books on anarchism, and published books on the French Revolution, books used today in our colleges as textbooks and authorities, and England never sent Kropatkin to jail. He lives there in peace, and today he is fighting on the side of the Allies, or helping with his pen and his voice against German militarism.

Harry Kelly, in this city, walking the streets a free man, runs a press and teaches anarchism, and, strongly pro-Ally, has advocated by voice and pen that we should fight against German militarism. It

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is no crime to believe in anarchism. It may be, in the opinion of a great many people, a foolish belief, but at least if we could once solve the economic problem and become industrially free, we could see whether under some circumstances it could work.

These defendants merely protested against the hypocrisy of the United States and our Allies in sending an army to Russia. They called upon the workers to help them protest against intervention in Russia. They say at the very end, "It is absurd to call us pro-German. We hate and despise German militarism more than do you hypocritical tyrants." Not pro-German, but liberty-loving Russians. It came into the evidence, as far as Abrams was concerned, his past in trying to overthrow the Russian Czar; the fact that he went to jail, fighting against autocracy in Russia.

If our Government is true, if our Government is right in its invasion of Russia, let us have a fair discussion. You cannot answer a fact, gentlemen of the jury, by sending people to jail. You may seal the lips with death, but you cannot stop a man's idealism and methods from continuing in the hearts of others. You may send these defendants to jail for anything up to eighty years, but you cannot thus answer the questions on the action of the United States in sending an army into Russia.

The truth can only be gotten at any time by a fair statement of the facts, by a fair marshalling of the evidence, by a true examination of the Sisson

documents, to see whether the Bolsheviks are really and truly pro-German. You cannot get the facts about the Bolsheviks offering to allow the railroads to be put under control of our Government, except by opening the mouths of all the people and letting them tell the truth. You cannot get the facts about whether the Bolsheviks offered to allow France to send officers to command the Bolsheviks to fight against Germany, by shutting the mouths of the people and holding indictments and jails over their heads. You cannot get the facts as to whether or not the Bolsheviks offered to turn over the Black Sea fleet to Great Britain, by sending "intelligence bureaus" with blackjacks to tap defendants gently on the head. You cannot get the facts on any public or international crisis by the fear of indictment, and when the Government does something that you and I think wrong, we have one duty as American citizens, and that is to raise our voices in protest.

You have heard of the little country known as Roumania, and what Turkey did to Roumania. There is a little story come out of Roumania which is so very applicable to this case that I will take a moment in telling it to you. The story is of "Lost Justice." A warrior said he would find Justice and bring it back to the world. He went out with his armies and his navies, and he covered the world with tears and blood, but he sought Justice in vain. Then a rich man said he would find Justice and

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bring Justice back in his money chest, but he also sought Justice in vain. Then a pilgrim went out and said he would find Justice, and he took with him a small bottle, within which he had the tears of the orphans, the bloody sweat of the workers and the oppressed, and he toiled and worked and sought Justice, but also in vain, until tired and almost dead, he threw the bottle from him and it broke, and the tears spilled, and from these tears rose a giant who said, "I am Protest, I will find Justice for you." And then in the morning dawn, came the figure of Justice, but without her sword and without her scales, and she said, "Protest, you are only a pygmy; when you become as vast as the ocean, then I will come with my sword and my scales."

And so these defendants, seeking Justice, are only small pygmies, but their voice rolling over the country and around the world, will make their protest a real giant, so Justice will come to the world, and will come back for the Russian people, against intervention; against anything in the way of autocracy; against any excuse for intervention; to give those people the right to put into force the economic beliefs they may have, and from this little court room, whether you send the pygmies to jail or not, the protest will go out and must go out, and Justice will come back to Russia. But, gentlemen of the jury, whither that protest does go, your place may be with those other juries who thought defendants were too unimportant, and that popular opinion was

against them, though I do not believe it is — the petty press may be — the cowed opinion may be.

Gentlemen of the jury, you may think these men are unimportant, and a conviction, more or less, what does it mean? It means that you are the last bulwark of these defendants between a long term in jail and freedom. It means that you must weigh the testimony for all. As far as Prober is concerned, the only evidence against him is he went to a meeting on Russia; that there was a riot; that he was hurt, and he lived way out in Borough Park, too far, where he could get treatment and have his clothes fixed up. So he remembered the business agent of his union, Abrams, and went there. When he got there he found that detectives had already arrested Abrams and Lachowsky. Each and every witness took the stand and told you that Prober had nothing to do with it; told you honestly; they took their own responsibility.

As far as these other defendants are concerned, you have one duty to perform. First, was there an agreement or conspiracy — and it means the same thing — to give out these pamphlets? Even if there was an agreement or conspiracy to give out these pamphlets, were the pamphlets a violation of law? If you find the pamphlets were not a violation of law, it will then be your duty, despite the proof of a conspiracy or agreement to give out the pamphlets, to find the defendants not guilty.

Gentlemen, you have seen the demeanor of the

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defendants in court. You saw them on the stand, not afraid, not saying, "I didn't do it," or "I didn't mean it," telling you the truth, what their protest consisted of; telling you what their idealism is; telling you that they believe in a better world, so every man can have the full product of his labor; so that every individual shall have enough food, enough clothing, and enough shelter; so that any individual will not know what poverty and hunger is, as long as he is able to create and produce, each man according to his needs. You may think their ideas of economics are wrong. You may think their way of going about it is wrong and harsh. They felt we needed a protest, and they made it loud; strong; perhaps bitter.

You may not believe that President Wilson is a hypocrite. You may not believe that he is a coward, as these defendants said. Their language was bitter, because they felt bitterly. The President may have some reason why he sent an army to Russia, but he has never said what it is. In his speeches he said he stretched out his hands to Russia. He said, "I would like to help you, but I cannot." Then he sends an army, and we can only take his public words and his public acts, and that is what these defendants did, and feeling that liberty had been brought to Russia, and now might be crushed, their words were bitter. And here are the words of Garrison, back in 1831, when he began to talk for the freedom of the black man,

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when he began to talk that slavery was wrong, when he began to talk against any form of slavery, while District Attorneys were putting men in jail for doing it, while Governors were protesting, while Presidents were sending the black men who escaped from the South to the North, back again. While the feeling of the press was that the black man should be a slave, one man up in Boston started a paper, called the "Liberator," and on January 1st, 1831, said:

"I am aware that many object to the severity of my language, but is there not cause for severity? I will be as harsh as truth and as uncompromising as justice. On this subject, I do not wish to think, or speak, or write, with moderation."

Those are the words of William Lloyd Garrison, one of those who started the freeing of the black man. The way of freeing may have been wrong. We might have been able to free the black man without four years of bloody civil war. As we look back at history we see that it is so. Garrison did use words of a harsh character; did use words that burnt and hurt, but they brought about the liberation of the black man.

So I say to you that these defendants protested against intervention in Russia, because they thought that was sending backward democracy and the liberation of mankind. They wanted to take humanity, especially in the form of democracy, and unite it.

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They wanted to take that humanity and lift it from its grovelling face to its knees and from its feet to its wings, sun-kissed and sun-crowned men, women and children, without poverty, without the possibility of sickness coming knocking at any single door because the neighbor down the block did not have enough food and sent the epidemic your way; without war, without kings, without these District Attorneys, without intelligence bureaus.

The fact that these defendants have these ideals and these hopes and these dreams, is no reason to send them to jail. If you send them to jail, gentlemen of the jury, you may think you have closed their lips and closed their mouths. At least I don't think you do, but the District Attorney may think he can do that. He may close their mouths, but for every man and every idealist that goes to jail ten thousand more step forward. For every man that goes to jail because of the truth, ten thousand stand up. Truth crushed to earth spreads over the earth. Truth travels faster forward than indictments, faster than jails, faster than intelligence bureaus.

So I ask you, gentlemen of the jury, each and every one of you, as the last bulwark of liberty, as a right of trial by jury, that each one search his conscience and decide for himself, and when you decide for yourself do not let the fact that some of your co-jurors hold the other way concern you. The Judge will tell you that it is your conscience, it is your judgment, that must decide, and not that of

the intelligence bureau, and you yourselves must be convinced, and you yourselves must believe that there has been a violation of the law, before you can honestly allow the foreman of the jury to come in and say, "We twelve find a verdict of guilty."

So, gentlemen, I leave the case with you. These defendants are fighters for their own ideals, men and women of courage, mistaken, perhaps, in some of your opinions, but at least honestly and truthfully they tell you that they wanted to help Russia and not hurt the United States. They wanted to help Russia, and not help Germany; they had no thought of Germany in their minds. They had no thought of anything about this war between the United States and Germany. They had one big idea to carry to the Americans, a liberty-loving people, calling to their attention what they thought was a wrongful act by the President of the United States, without authority of Congress, sending an army to invade a nation we were at peace with, calling to the American public to protest.

I saw a note in the press this morning that there is a possibility of the army in Russia being withdrawn. If these defendants had anything to do with starting the withdrawing of the army of intervention in Russia, you could give them eighty years, and they would accept with joy and pleasure, if they thought Russia would be saved in any respect because of their little act.

We leave the case with you and ask each man to

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feel that he must honestly and conscientiously himself be convinced, *beyond a reasonable doubt*, as to the guilt of these defendants, before he can allow the foreman to come in and say: "We twelve are agreed."

Opinion of U. S. Supreme Court

ON a single indictment, containing four counts, the five plaintiffs in error, hereinafter designated the defendants, were convicted of conspiring to violate provisions of the Espionage Act of Congress (section 3, title I, of Act June 15, 1917, c. 30, 40 Stat. 219, as amended by Act May 16, 1918, c. 75, 40 Stat. 553 [Comp. St. 1918, § 10212c]).

Each of the first three counts charged the defendants with conspiring, when the United States was at war with the Imperial Government of Germany, to unlawfully utter, print, write and publish: In the first count, "disloyal, scurrilous and abusive language about the form of government of the United States"; in the second count, language "intended to bring the form of government of the United States into contempt, scorn, contumely, and disrepute"; and in the third count, language "intended to incite, provoke and encourage resistance to the United States in said war." The charge in the fourth count was that the defendants conspired "when the United States was at war with the Imperial German Government, . . . unlawfully and

willfully, by utterance, writing, printing and publication to urge, incite and advocate curtailment of production of things and products, to wit, ordnance and ammunition, necessary and essential to the prosecution of the war." The offenses were charged in the language of the act of Congress.

It was charged in each count of the indictment that it was a part of the conspiracy that the defendants would attempt to accomplish their unlawful purpose by printing, writing and distributing in the city of New York many copies of a leaflet or circular, printed in the English language, and of another printed in the Yiddish language, copies of which, properly identified, were attached to the indictment.

All of the five defendants were born in Russia. They were intelligent, had considerable schooling, and at the time they were arrested they had lived in the United States terms varying from five to ten years, but none of them had applied for naturalization. Four of them testified as witnesses in their own behalf, and of these three frankly avowed that they were "rebels," "revolutionists," "anarchists," that they did not believe in government in any form, and they declared that they had no interest whatever in the government of the United States. The fourth defendant testified that he was a "Socialist" and believed in "a proper kind of government, not capitalistic," but in his classification the government of the United States was "capitalistic."

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It was admitted on the trial that the defendants had united to print and distribute the described circulars and that 5,000 of them had been printed and distributed about the 22d day of August, 1918. The group had a meeting place in New York City, in rooms rented by defendant Abrams, under an assumed name, and there the subject of printing the circulars was discussed about two weeks before the defendants were arrested. The defendant Abrams, although not a printer, on July 27, 1918, purchased the printing outfit with which the circulars were printed, and installed it in a basement room where the work was done at night. The circulars were distributed, some by throwing them from a window of a building where one of the defendants was employed, and others secretly, in New York City.

The defendants pleaded "not guilty," and the case of the government consisted in showing the facts we have stated, and in introducing in evidence copies of the two printed circulars attached to the indictment, a sheet entitled "Revolutionists Unite for Action," written by the defendant Lipman, and found on him when he was arrested, and another paper, found at the headquarters of the group, and for which Abrams assumed responsibility.

Thus the conspiracy and the doing of the overt acts charged were largely admitted and were fully established.

On the record thus described it is argued, somewhat faintly, that the acts charged against the

defendants were not unlawful because within the protection of that freedom of speech and of the press which is guaranteed by the First Amendment to the Constitution of the United States, and that the entire Espionage Act is unconstitutional because in conflict with that amendment.

This contention is sufficiently discussed and is definitely negated in *Schenck v. United States* and *Baer v. United States*, 249 U. S. 47, 39 Sup. Ct. 247, 63 L. Ed. 470, and in *Frohwerk v. United States*, 249 U. S. 204, 39 Sup. Ct. 249, 63 L. Ed. 561.

The claim chiefly elaborated upon by the defendants in the oral argument and in their brief is that there is no substantial evidence in the record to support the judgment upon the verdict of guilty and that the motion of the defendants for an instructed verdict in their favor was erroneously denied. A question of law is thus presented, which calls for an examination of the record, not for the purpose of weighing conflicting testimony, but only to determine whether there was some evidence, competent and substantial, before the jury, fairly tending to sustain the verdict. *Troxell, Administrator, v. Delaware, Lackawanna & Western R. R. Co.*, 227 U. S. 434, 442, 33 Sup. Ct. 274, 57 L. Ed. 586; *Lancaster v. Collins*, 115 U. S. 222, 225, 6 Sup. Ct. 33, 29 L. Ed. 373; *Chicago & North Western Ry. Co. v. Ohle*, 117 U. S. 123, 129, 6 Sup. Ct. 632, 29 L. Ed. 837. We shall not need to consider the sufficiency, under the rule just stated, of the evi-

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dence introduced as to all of the counts of the indictment, for, since the sentence imposed did not exceed that which might lawfully have been imposed under any single count, the judgment upon the verdict of the jury must be affirmed if the evidence is sufficient to sustain any one of the counts. *Evans v. United States*, 153 U. S. 608, 14 Sup. Ct. 939, 38 L. Ed. 839; *Claasen v. United States*, 142 U. S. 140, 12 Sup. Ct. 169, 35 L. Ed. 966; *Debs v. United States*, 249 U. S. 211, 216, 39 Sup. Ct. 252, 63 L. Ed. 566.

The first of the two articles attached to the indictment is conspicuously headed, "The Hypocrisy of the United States and her Allies." After denouncing President Wilson as a hypocrite and a coward because troops were sent into Russia, it proceeds to assail our government in general, saying:

"His [the President's] shameful, cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington and vicinity."

It continues:

"He [the President] is too much of a coward to come out openly and say: 'We capitalistic nations cannot afford to have a proletarian republic in Russia.'"

Among the capitalistic nations Abrams testified the United States was included.

Growing more inflammatory as it proceeds, the circular culminates in:

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"The Russian Revolution cries: Workers of the World! Awake! Rise! Put down your enemy and mine!"

"Yes friends, there is only one enemy of the workers of the world and that is CAPITALISM."

This is clearly an appeal to the "workers" of this country to arise and put down by force the government of the United States which they characterize as their "hypocritical," "cowardly" and "capitalistic" enemy.

It concludes:

"Awake! Awake, you Workers of the World! Revolutionists."

The second of the articles was printed in the Yiddish language and in the translation is headed, "Workers — Wake Up." After referring to "his Majesty, Mr. Wilson, and the rest of the gang, dogs of all colors!" it continues:

"Workers, Russian emigrants, you who had the least belief in the honesty of *our* government,"

— which defendants admitted referred to the United States Government —

"must now throw away all confidence, must spit in the face of the false, hypocritic, military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help, to the prosecution of the war."

The purpose of this obviously was to persuade the persons to whom it was addressed to turn a deaf ear to patriotic appeals in behalf of the govern-

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ment of the United States, and to cease to render it assistance in the prosecution of the war.

It goes on:

“With the money which you have loaned, or are going to loan them, they will make bullets not only for the Germans, but also for the Workers Soviets of Russia. *Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom.*”

It will not do to say, as is now argued, that the only intent of these defendants was to prevent injury to the Russian cause. Men must be held to have intended, and to be accountable for, the effects which their acts were likely to produce. Even if their primary purpose and intent was to aid the cause of the Russian Revolution, the plan of action which they adopted necessarily involved, before it could be realized, defeat of the war program of the United States, for the obvious effect of this appeal, if it should become effective, as they hoped it might, would be to persuade persons of character such as those whom they regarded themselves as addressing, not to aid government loans and not to work in ammunition factories, where their work would produce “bullets, bayonets, cannon” and other munitions of war, the use of which would cause the “murder” of Germans and Russians.

Again, the spirit becomes more bitter as it proceeds to declare that —

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"America and her Allies have betrayed [the Workers]. Their robberish aims are clear to all men. The destruction of the Russian Revolution, that is the politics of the march to Russia.

"Workers, our reply to the barbaric intervention has to be a general strike! An open challenge only will let the government know that not only the Russian Worker fights for freedom, but also here in America lives the spirit of Revolution."

This is not an attempt to bring about a change of administration by candid discussion, for no matter what may have incited the outbreak on the part of the defendant anarchists, the manifest purpose of such a publication was to create an attempt to defeat the war plans of the government of the United States, by bringing upon the country the paralysis of a general strike, thereby arresting the production of all munitions and other things essential to the conduct of the war.

This purpose is emphasized in the next paragraph, which reads:

"Do not let the government scare you with their wild punishment in prisons, hanging and shooting. We must not and will not betray the splendid fighters of Russia. *Workers, up to fight.*"

After more of the same kind, the circular concludes:

"Woe unto those who will be in the way of progress. Let solidarity live!"

It is signed, "The Rebels."

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That the interpretation we have put upon these articles, circulated in the greatest port of our land, from which great numbers of soldiers were at the time taking ship daily, and in which great quantities of war supplies of every kind were at the time being manufactured for transportation overseas, is not only the fair interpretation of them, but that it is the meaning which their authors consciously intended should be conveyed by them to others is further shown by the additional writings found in the meeting place of the defendant group and on the person of one of them. One of these circulars is headed: "Revolutionists! Unite for Action!"

After denouncing the President as "Our Kaiser" and the hypocrisy of the United States and her Allies, this article concludes:

"Socialists, Anarchists, Industrial Workers of the World, Socialists, Labor party men and other revolutionary organizations, *Unite for Action* and let us save the Workers' Republic of Russia!

"Know you lovers of freedom that in order to save the Russian revolution, we must keep the armies of the allied countries busy at home."

Thus was again avowed the purpose to throw the country into a state of revolution, if possible, and to thereby frustrate the military program of the government.

The remaining article, after denouncing the President for what is characterized as hostility to the Russian revolution, continues:

"We, the toilers of America, who believe in real liberty, shall *pledge ourselves*, in case the United States will participate in that bloody conspiracy against Russia, *to create so great a disturbance that the autocrats of America shall be compelled to keep their armies at home, and not be able to spare any for Russia.*"

It concludes with this definite threat of armed rebellion:

"If they will use arms against the Russian people to enforce their standard of order, *so will we use arms*, and they shall never see the ruin of the Russian Revolution."

These excerpts sufficiently show, that while the immediate occasion for this particular outbreak of lawlessness, on the part of the defendant alien anarchists, may have been resentment caused by our government sending troops into Russia as a strategic operation against the Germans on the eastern battle front, yet the plain purpose of their propaganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of embarrassing and if possible defeating the military plans of the government in Europe. A technical distinction may perhaps be taken between disloyal and abusive language applied to the *form* of our government or language intended to bring the *form* of our government into contempt and disrepute, and language of like character and intended to pro-

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duce like results directed against the President and Congress, the agencies through which that form of government must function in time of war. But it is not necessary to a decision of this case to consider whether such distinction is vital or merely formal, for the language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war, as the third count runs, and the defendants, in terms, plainly urged and advocated a resort to a general strike of workers in ammunition factories for the purpose of curtailing the production of ordnance and munitions necessary and essential to the prosecution of the war as is charged in the fourth count. Thus it is clear not only that some evidence but that much persuasive evidence was before the jury tending to prove that the defendants were guilty as charged in both the third and fourth counts of the indictment and under the long-established rule of law hereinbefore stated the judgment of the District Court must be *affirmed*.

Justice Holmes's Dissent

THIS indictment is founded wholly upon the publication of two leaflets which I shall describe in a moment. The first count charges a conspiracy pending the war with Germany to publish abusive language about the form of government

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of the United States, laying the preparation and publishing of the first leaflet as overt acts. The second count charges a conspiracy pending the war to publish language intended to bring the form of government into contempt, laying the preparation and publishing of the two leaflets as overt acts. The third count alleges a conspiracy to encourage resistance to the United States in the same war and to attempt to effectuate the purpose by publishing the same leaflets. The fourth count lays a conspiracy to incite curtailment of production of things necessary to the prosecution of the war and to attempt to accomplish it by publishing the second leaflet to which I have referred.

The first of these leaflets says that the President's cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington. It intimates that "German militarism combined with allied capitalism to crush the Russian revolution" — goes on that the tyrants of the world fight each other until they see a common enemy — working class enlightenment, when they combine to crush it; and that now militarism and capitalism combined, though not openly, to crush the Russian revolution. It says that there is only one enemy of the workers of the world and that is capitalism; that it is a crime for workers of America, etc., to fight the workers' republic of Russia, and ends "Awake! Awake, you workers of the world! Revolutionists." A note adds, "It is

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absurd to call us pro-German. We hate and despise German militarism more than do you hypocritical tyrants. We have more reason for denouncing German militarism than has the coward of the White House."

The other leaflet, headed "Workers — Wake Up," with abusive language says that America together with the Allies will march for Russia to help the Czecho-Slovaks in their struggle against the Bolsheviki, and that this time the hypocrites shall not fool the Russian emigrants and friends of Russia in America. It tells the Russian emigrants that they now must spit in the face of the false military propaganda by which their sympathy and help to the prosecution of the war have been called forth and says that with the money they have lent or are going to lend "they will make bullets not only for the Germans but also for the Workers Soviets of Russia," and further, "Workers in the ammunition factories, you are producing bullets, bayonets, cannon to murder not only the Germans, but also your dearest, best, who are in Russia fighting for freedom." It then appeals to the same Russian emigrants at some length not to consent to the "inquisitionary expedition in Russia," and says that the destruction of the Russian revolution is "the politics of the march on Russia." The leaflet winds up by saying, "Workers, our reply to this barbaric intervention has to be a general strike!" and after a few words on the spirit of revolution, exhortations

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not to be afraid, and some usual tall talk ends "Woe unto those who will be in the way of progress. Let solidarity live! The Rebels."

No argument seems to be necessary to show that these pronunciamientos in no way attack the form of government of the United States, or that they do not support either of the first two counts. What little I have to say about the third count may be postponed until I have considered the fourth. With regard to that it seems too plain to be denied that the suggestion to workers in the ammunition factories that they are producing bullets to murder their dearest, and the further advocacy of a general strike, both in the second leaflet, do urge curtailment of production of things necessary to the prosecution of the war within the meaning of the Act of May 16, 1918, c. 75, 40 Stat. 553, amending section 3 of the earlier Act of 1917 (Comp. St. § 10212c). But to make the conduct criminal that statute requires that it should be "with intent by such curtailment to cripple or hinder the United States in the prosecution of the war." It seems to me that no such intent is proved.

I am aware of course that the word "intent" as vaguely used in ordinary legal discussion means no more than knowledge at the time of the act that the consequences said to be intended will ensue. Even less than that will satisfy the general principle of civil and criminal liability. A man may have to pay damages, may be sent to prison, at common law

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might be hanged, if at the time of his act he knew facts from which common experience showed that the consequences would follow, whether he individually could foresee them or not. But, when words are used exactly, a deed is not done with intent to produce a consequence unless that consequence is the aim of the deed. It may be obvious, and obvious to the actor, that the consequence will follow, and he may be liable for it even if he regrets it, but he does not do the act with intent to produce it unless the aim to produce it is the proximate motive of the specific act, although there may be some deeper motive behind.

It seems to me that this statute must be taken to use its words in a strict and accurate sense. They would be absurd in any other. A patriot might think that we were wasting money on aeroplanes, or making more cannon of a certain kind than we needed, and might advocate curtailment with success, yet even if it turned out that the curtailment hindered and was thought by other minds to have been obviously likely to hinder the United States in the prosecution of the war, no one would hold such conduct a crime. I admit that my illustration does not answer all that might be said but it is enough to show what I think and to let me pass to a more important aspect of the case. I refer to the First Amendment to the Constitution that Congress shall make no law abridging the freedom of speech.

I never have seen any reason to doubt that the questions of law that alone were before this Court in the Cases of Schenck (249 U. S. 47, 39 Sup. Ct. 247, 63 L. Ed. 470), Frohwerk (249 U. S. 204, 39 Sup. Ct. 249, 63 L. Ed. 561), and Debs (249 U. S. 211, 39 Sup. Ct. 252, 63 L. Ed. 566) were rightly decided. I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is greater in time of war than in time of peace because war opens dangers that do not exist at other times.

But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so. Publishing those opinions for the very purpose of

obstructing, however, might indicate a greater danger and at any rate would have the quality of an attempt. So I assume that the second leaflet if published for the purposes alleged in the fourth count might be punishable. But it seems pretty clear to me that nothing less than that would bring these papers within the scope of this law. An actual intent in the sense that I have explained is necessary to constitute an attempt, where a further act of the same individual is required to complete the substantive crime, for reasons given in *Swift & Co. v. United States*, 196 U. S. 375, 396, 25 Sup. Ct. 276, 49 L. Ed. 518. It is necessary where the success of the attempt depends upon others because if that intent is not present the actor's aim may be accomplished without bringing about the evils sought to be checked. An intent to prevent interference with the revolution in Russia might have been satisfied without any hindrance to carrying on the war in which we were engaged.

I do not see how any one can find the intent required by the statute in any of the defendants' words. The second leaflet is the only one that affords even a foundation for the charge, and there, without invoking the hatred of German militarism expressed in the former one, it is evident from the beginning to the end that the only object of the paper is to help Russia and stop American intervention there against the popular government—not to impede the United States in the war that it

was carrying on. To say that two phrases taken literally might import a suggestion of conduct that would have interference with the war as an indirect and probably undesired effect seems to me by no means enough to show an attempt to produce that effect.

I return for a moment to the third count. That charges an intent to provoke resistance to the United States in its war with Germany. Taking the clause in the statute that deals with that in connection with the other elaborate provisions of the Act, I think that resistance to the United States means some forcible act of opposition to some proceeding of the United States in pursuance of the war. I think the intent must be the specific intent that I have described and for the reasons that I have given I think that no such intent was proved or existed in fact. I also think that there is no hint at resistance to the United States as I construe the phrase.

In this case sentences of twenty years' imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them. Even if I am technically wrong and enough can be squeezed from these poor and puny anonymities to turn the color of legal litmus paper, I will add, even if what I think the necessary intent were shown, the most nominal punishment

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seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges but for the creed that they avow — a creed that I believe to be the creed of ignorance and immaturity when honestly held, as I see no reason to doubt that it was held here, but which, although made the subject of examination at the trial, no one has a right even to consider in dealing with the charges before the Court.

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not

every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of 1798 (Act July 14, 1798, c. 73, 1 Stat. 596), by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, "Congress shall make no law abridging the freedom of speech." Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

Mr. Justice Brandeis concurs with the foregoing opinion.

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